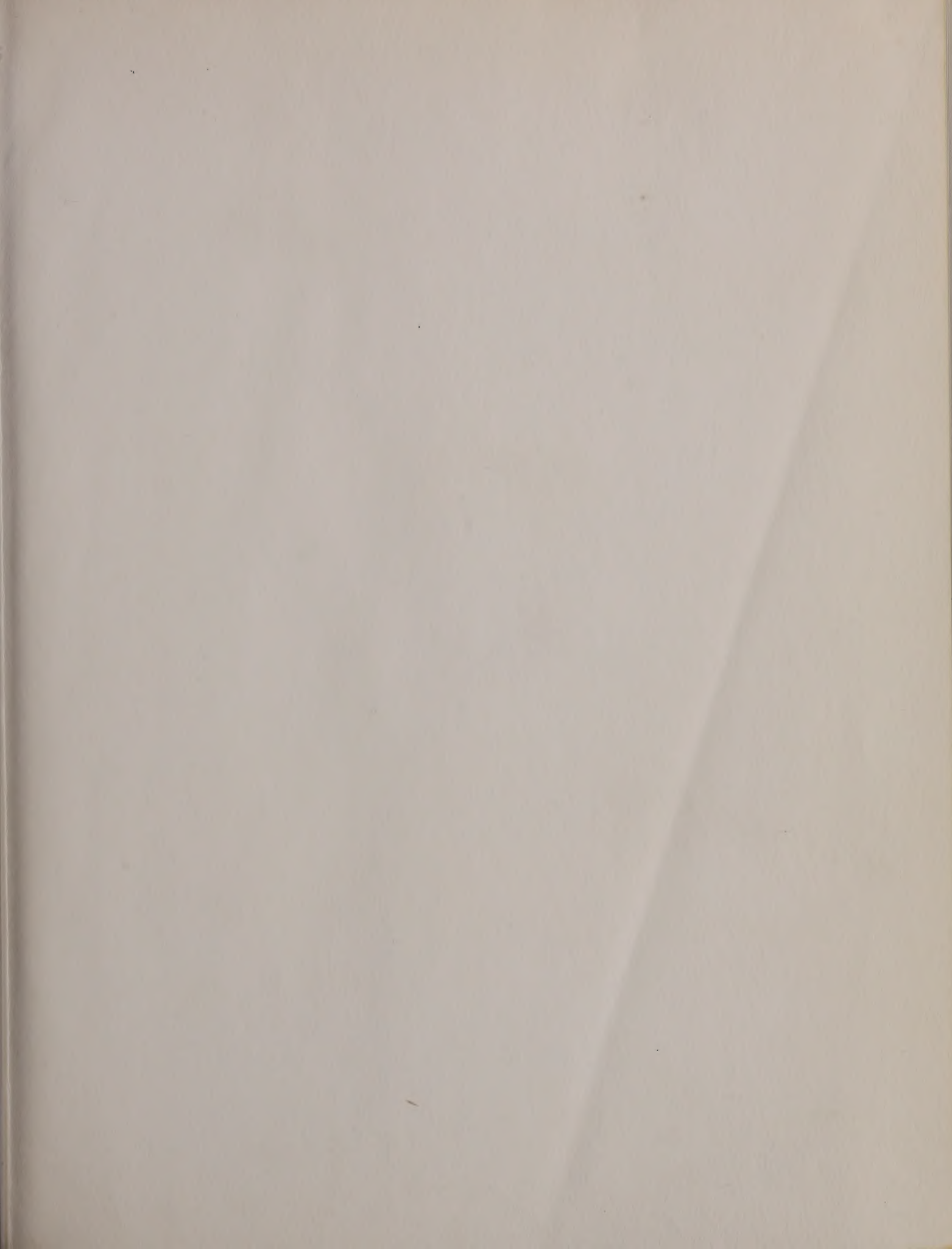




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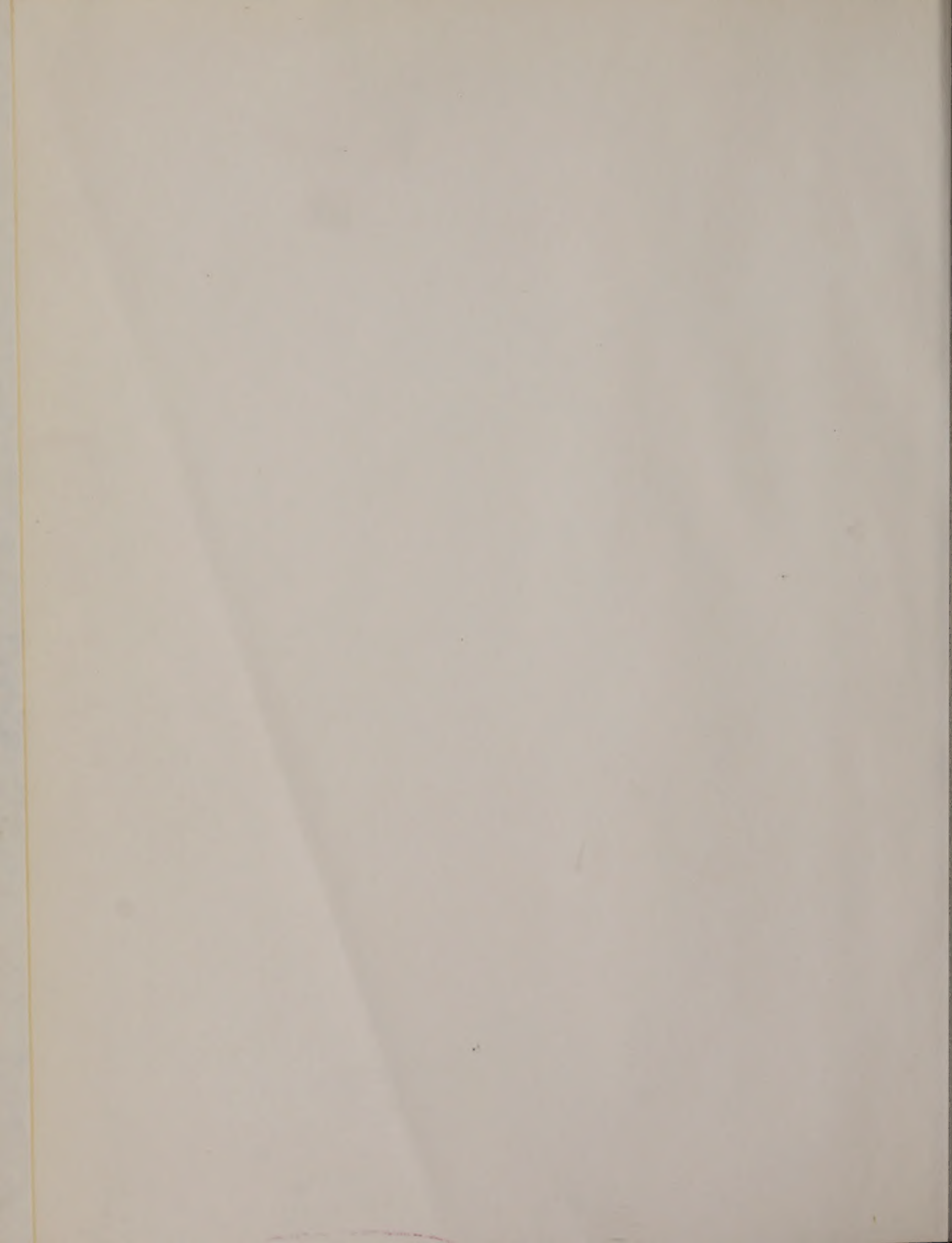












*Maryland.*  
CONSTITUTIONAL CONVENTION COMMISSION.

COMMITTEE HEARINGS

1. Committee on Political Subdivisions and Local Legislation. January 28, 1966, 2:00 p.m., Assembly Room, State Office Building, Annapolis, Maryland.
2. Committee on Legislative Department. February 4, 1966, 11:30 a.m., University of Maryland School of Law.
3. Committee on the Executive Department with:
  - A. Governor J. Millard Tawes, February 24, 1966, 9:30 a.m.
  - B. Mayor Theodore R. McKeldin, February 24, 1966, 10:45 a.m.
  - C. Former Governor William Preston Lane, Jr., February 24, 1966, 11:45 a.m., Room 801, State Office Building, Baltimore, Maryland.
4. Committee on the Judiciary Department, February 26, 1966, 10:00 a.m., University of Maryland School of Law, Baltimore, Maryland.
5. Committee on Miscellaneous Provisions, March 10, 1966, 10:00 a.m. Room 801, State Office Building, Baltimore, Maryland.



Maryland

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Vol. 13

FOLIO

# CONSTITUTIONAL CONVENTION COMMISSION

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William J. McWilliams (*Resigned September 10, 1965*)  
Ridgely P. Melvin, Jr. (*Resigned August 2, 1966*)  
George L. Russell, Jr. (*Resigned July 12, 1966*)

\* \* \* \* \*

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF CHEMISTRY

PHYSICAL CHEMISTRY

LECTURE NOTES

1. The first law of thermodynamics states that the change in internal energy of a system is equal to the heat added to the system minus the work done by the system. This is expressed mathematically as  $\Delta U = Q - W$ . The internal energy  $U$  is a state function, meaning its value depends only on the current state of the system, not on the path taken to reach that state. Heat  $Q$  and work  $W$  are path functions, meaning their values depend on the specific process used to change the state of the system.

2. The second law of thermodynamics states that the entropy of an isolated system never decreases. This is expressed mathematically as  $\Delta S \geq 0$  for an isolated system. Entropy  $S$  is a state function that measures the degree of disorder or randomness in a system.

3. The third law of thermodynamics states that the entropy of a perfect crystal at absolute zero is zero. This is expressed mathematically as  $S = 0$  at  $T = 0$  K for a perfect crystal.

4. The Gibbs free energy  $G$  is a state function that combines enthalpy  $H$  and entropy  $S$  to predict the spontaneity of a process at constant temperature and pressure. It is defined as  $G = H - TS$ .

5. The Helmholtz free energy  $A$  is a state function that combines internal energy  $U$  and entropy  $S$  to predict the spontaneity of a process at constant temperature and volume. It is defined as  $A = U - TS$ .

6. The chemical potential  $\mu$  is a state function that represents the change in Gibbs free energy per mole of a substance when it is added to or removed from a system. It is defined as  $\mu = \left(\frac{\partial G}{\partial n}\right)_{T, P, n_{j \neq i}}$ , where  $n$  is the number of moles of the substance.

7. The chemical potential of a pure substance is equal to its molar Gibbs free energy.

8. The chemical potential of a substance in a mixture is less than its chemical potential in the pure state.



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Charles Della  
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Stanford Hoff  
(served until June 6, 1966)  
Clarence W. Miles  
(served until June 6, 1966)  
George L. Russell, Jr.  
(served until June 6, 1966)





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PRESENT:

### Members of the Committee

Mr. Daniel R. Thompson

**THE JACK SALOMON REPORTING SERVICE**  
100 Equitable Building  
Baltimore 2, Maryland



1 THE CHAIRMAN: I want to introduce to the  
2 Committee two very distinguished members who are present  
3 and to welcome them; Mr. William S. Ratchford who is the  
4 Executive Secretary of the Maryland Association of  
5 County Commissioners, and Mr. Daniel R. Thompson,  
6 Executive Secretary and General Counsel of the Maryland  
7 Municipal League. They are each consultants of the  
8 Commission and I feel pleased to have them present here  
9 with us today.

10 The Committee will note that we have a  
11 reporter present and the purpose of having the reporter  
12 present is that, as we discuss various subjects on our  
13 agenda, the contents of that discussion will be available  
14 for inclusion in the minutes and for the benefit of the  
15 members of the Committee who are not present and anyone  
16 else who may go into the study of the scope of activity  
17 of our Committee and the subjects which are part of our  
18 responsibility, and particularly the rewrite of the  
19 constitutional provision covering local government and  
20 other related matters in the Constitution.

21 I think that we will probably get the best



1 productive effort from our two distinguished consultants  
2 if we more or less move in normal course and simply call  
3 on them to comment at will and fully and freely whenever  
4 a spark is struck and, where something may be a matter of  
5 research accomplished by any one of you or where it may  
6 be a subject where you feel that you would like to make  
7 comment for the benefit of further consideration by the  
8 Committee as a whole, I am going to ask that you feel  
9 perfectly free to interrupt and participate in the dis-  
10 cussion of each of the matters which are on our agenda.

11 The two principal matters on the agenda today  
12 are, first of all, to follow through with what our Chair-  
13 man suggested at the last meeting of the full Commission,  
14 the, more or less, topicing of research questions in order  
15 that those questions can be assigned out for the actual  
16 accomplishing of the research that will be necessary to  
17 properly substantiate the decisions of this Committee and  
18 as an aid insofar as all of us are concerned in arriving  
19 at those decisions.

20 We are fortunate that Dr. Loevy and Jack Jones  
21 and John Brooks were able to get together and I received





1 a list of such research questions, some nine in number,  
2 and I have added one to that which I am going to turn  
3 around and make the number one question and I would like  
4 to briefly run over that list with you, because we do not  
5 have enough copies, I don't believe, for distribution.

6 DR. LOEVY: I have put one copy on each table,  
7 so they do have one before them.

8 THE CHAIRMAN: All right, fine. We will run  
9 over them anyway, and the purpose of going over them will  
10 be to make sure that they do state what we want researched  
11 and then we can add any other questions we may feel are  
12 necessary.

13 The first question that I would like to see  
14 researched, and I am adding to the list as number one, is  
15 a complete analysis of the existing county and city govern-  
16 ments in the State as of the present time.

17 MR. MELVIN: I think that is an excellent idea.

18 THE CHAIRMAN: Now, I am hopeful that a great  
19 deal of the material has already been gathered together  
20 and possibly either Mr. Thompson or Mr. Ratchford may  
21 know where that information can be readily obtained,



1 rather than taking the time that would be involved to  
2 accomplish it; but I do feel that before we really com-  
3 plete our deciding of the various issues that we've got  
4 to decide, we have to fully and accurately know what kind  
5 of government each of the counties is operating under,  
6 what kind and type of administrative governmental setup  
7 each and every one of the municipalities in the State is  
8 operating under.

9 In other words, my thinking is a listing and  
10 compilation of all of the existing governmental forms of  
11 all of the local units, county, city, village, town, et  
12 cetera, throughout the State and an analysis of each of  
13 those administrative governmental operating forms. With  
14 that information in the background, then we can go for-  
15 ward and see what we are going to do by way of revising  
16 it or changing it, or what we are going to do with it.  
17 Of course, I feel that a lot of that information is within  
18 the minds of the members of the Committee. However, I  
19 think we have to have a full and complete compilation and  
20 analysis of all existing governmental forms throughout  
21 the State in all of the local subdivisions.





1           Along that line, Mr. Ratchford, what comment  
2 might you have?

3           MR. RATCHFORD: Well, I think, as far as the  
4 counties are concerned, two studies are out that are  
5 current and reasonably useful and both of these Dr.  
6 Burdett is very well familiar with. One is a study by  
7 Jean Spencer entitled Contemporary Local Government in  
8 Maryland, published by the Bureau of Governmental Research  
9 of the University of Maryland. The other is a study which  
10 the University did for Harford County entitled Govern-  
11 mental Alternatives to Harford County. While the second  
12 one is directed to Harford County, they do include a  
13 section on the administration of contemporary local govern-  
14 ment.

15           I think, between these two, most of the infor-  
16 mation is there in as much detail as the Committee would  
17 wish to go into, the type of structural organization as  
18 well as the home rule.

19           THE CHAIRMAN: And how recent is that study?

20           MR. RATCHFORD: That one -- when was that pub-  
21 lished? In October?



1 DR. BURDETT: November 15th, for Harford County  
2 and October, for Contemporary Local Government in Maryland.

3 MR. RATCHFORD: They are still current.

4 MR. BROOKS: Are those single volume works,  
5 each report a single volume?

6 MR. RATCHFORD: Yes, sir.

7 MR. BROOKS: A paperback that we could perhaps  
8 get for distribution?

9 MR. RATCHFORD: Well, I defer to Dr. Burdett  
10 on that point.

11 DR. BURDETT: You can get Contemporary Local  
12 Government in Maryland, but you will be limited in the  
13 number of copies for Harford County, since this was an  
14 individual report. I think there may be as many as  
15 twenty-five or thirty copies in existence now.

16 MR. RATCHFORD: Yet, the section they want on  
17 alternatives perhaps could be obtained. This is a small  
18 section, about twenty or thirty pages, which could be  
19 Xeroxed or something like that. I don't think you would  
20 be too interested in Harford County in detail, but it is  
21 written by Grover Nash and his discussions of the various





1 alternative structural ranges is as good as I have seen  
2 on the State of Maryland.

3 THE CHAIRMAN: Well, my thought would be, then,  
4 that might be a beginning point, but I want it really  
5 brought right down to the present and, after we have a  
6 chance to take a look at that to see whether or not we  
7 might want to somewhat reorganize it.

8 DR. BURDETT: You have some other studies in  
9 the past few months. The University of Delaware has done  
10 one for Cecil County. I have not read it. I saw it for  
11 about ten minutes.

12 MR. RATCHFORD: I've seen it in the newspapers.

13 DR. BURDETT: And I think Jean Spencer has one  
14 copy. You see, we have had study commissions in some five  
15 counties this fall, in Harford, Cecil, Caroline, Kent and  
16 Charles.

17 MR. RATCHFORD: Right, but unfortunately many  
18 of the studies, particularly in Kent and Caroline, are  
19 going to come out with recommendations only and not so  
20 much a study of the existing government. The report will  
21 be perhaps five, ten pages of recommendations for



1 improvements. However, I think you will find, Mr.  
2 Clagett, that this Harford study, as I say, this is  
3 current because, to my knowledge, no county has made any  
4 fundamental change in its organizational structure since  
5 Mr. Nash was doing his analysis back during the summer  
6 and the fall.

7 THE CHAIRMAN: Well, of course, Dr. Burdett  
8 is on a committee which has just been appointed in Prince  
9 Georges County, and that committee actually is charged  
10 with the responsibility of making a study and recommenda-  
11 tions?

12 DR. BURDETT: Correct, but not to report until  
13 July 1967.

14 THE CHAIRMAN: That is the only difficulty.  
15 Nevertheless, it seems to me that by the presence of Dr.  
16 Burdett here, we can aid him and he can aid us and,  
17 regardless of what direction his report might take, a  
18 lot of the material can still be gotten together and  
19 certainly has to be a part of our absorption to come up  
20 with our work product, to accomplish our purposes.

21 DR. BURDETT: We are going to have a full time





1 staff man for that committee beginning the 7th of  
2 February.

3 THE CHAIRMAN: I am thinking in terms of not  
4 only getting the material, but then compiling that material,  
5 digesting that material and then coming up with an analysis  
6 of our own that actually does tell us what the existing  
7 types of governmental organization in the counties is,  
8 what the existing types of governmental administration we  
9 have in all of the various municipalities throughout the  
10 entire State and then a compilation of them, grouped to-  
11 gether so we see what we are dealing with.

12 MR. RATCHFORD: There is one other factor,  
13 Mr. Clagett, that would be useful to you, I think, in this  
14 analysis. I would expect in this session of the Legis-  
15 lature, you are going to see legislation introduced in a  
16 number of counties to modify the authority which is pos-  
17 sessed by the County Board, basically to enlarge it, as  
18 well as perhaps to make some modifications in the organi-  
19 zational structure of the county.

20 The feeling among many of the rural counties  
21 is that this is their last chance before reapportionment



1 to get this type of legislation through, and I have already  
2 seen in just this first week a number of bills that have  
3 been introduced from small counties, basically enlarging  
4 the powers of the Board of County Commissioners. I sus-  
5 pect we will see toward the end of this session the  
6 creation of positions of administrative assistants or  
7 some type of professional administration direction in the  
8 counties. This would be another factor.

9 Of course, there would be no way really to  
10 know what has been enacted until about the end of March,  
11 but obviously any analysis which you make I think should  
12 include this, because I feel this session, more than most  
13 legislative sessions, will bring about some changes in  
14 many of the existing county governments. However, as I  
15 say, this will be toward the end of March before this  
16 type of thing will be available; and I would be very  
17 happy, because part of my job is to keep track of this  
18 type of legislation, to feed the information into your  
19 Committee, so you could have it and you will see the  
20 changes as they develop in these counties.

21 THE CHAIRMAN: What I gather you are referring





1 to is some of the counties are going to take advantage  
2 of this article which will be up for referendum in 1966,  
3 11F, I believe it is, Code Counties?

4 MR. RATCHFORD: No, not so much the Code  
5 County, but more in line with -- there is a provision of  
6 the law, Article 25, which is the general County Commis-  
7 sioners law in the State of Maryland. One of the sections,  
8 Section 3, has, I believe, twenty-five enumerated powers  
9 that a County Board can exercise. Many of the counties  
10 are exempted from this. They are beginning to take off  
11 some of these exemptions; that is one phase.

12 I think it will be done not so much in refer-  
13 ence to the Code or home rule, but in what they can do by  
14 local legislation this year which perhaps, next time  
15 around, they will not have a senator and they would rather  
16 get it done now. As I said, this will be done through  
17 local law, but they will make some changes in perhaps the  
18 type of analysis Miss Spencer and Mr. Nash made in their  
19 studies, that I feel sure you would want to take into  
20 account in your own analysis.

21 THE CHAIRMAN: I am sure we would, and that is



1 moving in the direction that actually my thinking goes,  
2 that I feel is essential for us to be aware of, before  
3 we come up with a final product.

4 Mr. Thompson, do you have any comment on that?

5 MR. THOMPSON: Mr. Chairman, I would like the  
6 opportunity to comment, prior to expressing a few thoughts,  
7 I should like to express my gratitude for the kind words  
8 of introduction at the commencement of this meeting.

9 I would agree with you, Mr. Chairman, on the  
10 importance and even the necessity of having a complete  
11 analysis of the forms of government which I think will be  
12 helpful to ascertain from the start the extent of the  
13 analysis which is intended and also the amount of time  
14 which is available within which to prepare such an analysis.

15 I would say that there are some studies avail-  
16 able in addition to those that were mentioned by Professor  
17 Burdett and by Mr. Ratchford which may be of assistance on  
18 the municipal side. There is, for example, a study under  
19 way in Wicomico County to determine what the best form of  
20 government is for the City of Salisbury, vis-a-vis, the  
21 county.





1           There is, of course, information in Miss  
2           Spencer's book which has already been referred to with  
3           respect to municipalities, as well as with respect to  
4           counties. There are numerous studies of a variety of  
5           aspects on municipal governments, and there are a number  
6           of municipalities in the State of Maryland, which have  
7           been prepared in the past five or six years by the  
8           Municipal Technical Advisory Service of the Bureau of  
9           Governmental Research, of which Professor Burdett is the  
10          head. Therein, I think, would be found a number of  
11          valuable items, and I do really believe that a lot of  
12          this original work would be available for your analysis  
13          and study which would sufficiently provide you with a  
14          basis on which you can make thorough recommendations in  
15          reforming and advising changes on the present constitu-  
16          tional form.

17               THE CHAIRMAN: Thank you. Ridge, do you have  
18               any comment?

19               MR. MELVIN: It would occur to me that it  
20               wouldn't be necessary to go into great detail, since we  
21               are talking about a constitution, and that the normal



1 detail that you would expect if you were examining minute-  
2 ly the governmental structure of any county would not be  
3 necessary. In addition to that, the only comment I would  
4 have or suggestion would be that this study include also  
5 an analysis of the present constitutional provisions and  
6 perhaps recommendations and criticisms of the present,  
7 for example, 11A and 11E.

8 After all, we are dealing with the Constitution  
9 and it would seem to me that that would be helpful to us  
10 as members of the Committee to know in summary form just  
11 exactly what the present constitutional provisions are.

12 THE CHAIRMAN: Well, I think that should in-  
13 clude Article 13, too, because there is the responsibility  
14 of organization of counties and new subdivisions and the  
15 two are relatively interrelated, and I do not see any  
16 reason why, as we get the actual material together and  
17 study of the existing governmental setup, that we cannot  
18 then include the analysis of the present provisions con-  
19 tained in the Constitution. The two could well run to-  
20 gether.

21 Well, I think then we are more or less in





1 agreement that that is certainly one where we will require  
2 assigning out to our research assistants because of the  
3 scope and the nature of the material that will have to be  
4 gathered and digested in order to accomplish it.

5 MR. BROOKS: Excuse me just a moment, Mr.  
6 Chairman. I would like to ask what is the source of the  
7 two reports that you have mentioned, Mr. Ratchford? Are  
8 those available in your office, for instance?

9 MR. RATCHFORD: You're talking about Miss  
10 Spencer's study, now?

11 MR. BROOKS: Yes, Miss Spencer's study.

12 DR. BURDETT: They are probably in mine.

13 MR. RATCHFORD: You can probably get them in  
14 Dr. Burdett's office.

15 DR. BURDETT: You will have no problem in  
16 getting copies. You will have a problem with getting  
17 great quantities of copies.

18 MR. BROOKS: Would you send us a copy of each?

19 DR. BURDETT: Yes.

20 MR. BROOKS: Thank you.

21 THE CHAIRMAN: Possibly, before we leave that



1 matter, it has become evident that we can tap a lucrative  
2 source in our own Committee member, Dr. Burdett, and,  
3 Doctor, I would like to have your comment insofar as the  
4 scope of this analysis and the necessity of it.

5 DR. BURDETT: I am inclined to agree with Mr.  
6 Melvin, that we probably do not need to go into the  
7 structure of every municipality and of every county, if  
8 we can go into an analysis of the types of forms and  
9 identify the various units of government under typed  
10 categories. So that we might not have to, if Harford  
11 is one type, go into detail.

12 Let us say in Frederick County, which would be  
13 highly comparable, there is talk of a study in Frederick,  
14 but none has been undertaken. However, I would not think  
15 the structure is fundamentally different than Harford.  
16 You would know more about that than I, Mr. Ratchford.

17 MR. RATCHFORD: Not fundamentally.

18 DR. BURDETT: The system, I gather, is very  
19 comparable. The Harford study was made after visits by  
20 the study committee to Wicomico and Prince Georges,  
21 Frederick, and perhaps -- did you go to Allegheny? I have



1 forgotten.

2 MR. RATCHFORD: Caroline.

3 DR. BURDETT: Yes, you went to Caroline. How-  
4 ever, I think this should cut the work down, and you have  
5 to realize, Miss Spencer, talking about the magnitude of  
6 this thing, spent nearly two years in her analysis. It  
7 is a very complex subject.

8 MR. THOMPSON: Mr. Chairman, I should mention  
9 that just yesterday I heard that there will be introduced  
10 into the general assembly a proposed constitutional  
11 amendment which will provide for the consolidation of  
12 municipalities at the will of any two or three or number  
13 of adjoining municipalities which would decide to merge.  
14 That would be a factor.

15 THE CHAIRMAN: That would be a very important  
16 factor because it gives a good indication insofar as the  
17 thinking of the members of the Legislature which ties in  
18 with our own thinking because, at the last meeting of  
19 this Committee, it was more or less touched upon and dis-  
20 cussed briefly that one of the important ways of meeting  
21 the transition to urban life and the complexities and so





1 forth that come about by reason of that very factual  
2 change and, in order to more or less be flexible to con-  
3 tend and cope with those complexities, intergovernmental  
4 agreement would certainly be something that would come  
5 within the scope of the actual constitutional provision  
6 that we would write.

7 We do not have one in the Constitution at the  
8 present time. We do have a provision for intergovern-  
9 mental relations in the suggested models, but actually  
10 our present Constitution is barren insofar as providing  
11 for any such thing, and it seems to me that that is cer-  
12 tainly one of the best ways of coping with the problem  
13 and the overflowing of those problems from one munici-  
14 pality into the other and county into city and actually  
15 even across state boundaries.

16 So, if such an amendment has been introduced,  
17 I think the analysis or the assignment of this particular  
18 phase of our research should well include determining  
19 what if anything has been done and is being done in the  
20 Legislature along the line of governmental change and  
21 administrative setup.



1           The second question, and I want to move on  
2 because we've got some ten here, is the gathering to-  
3 gether of all modern state constitutions with appropriate  
4 sections on local subdivisions and metropolitan forms of  
5 government.

6           Now, it seems to me that there we clearly see  
7 a great deal of hard work has got to be accomplished in  
8 the physical getting together of all the modern state  
9 constitutions and then digesting appropriate provisions  
10 contained there, where they can be of assistance to us,  
11 either by way of work accomplished by someone else that  
12 we can adopt or at least we will be familiar with before  
13 we decide upon our own work.

14           DR. BURDETT: I think the constitutions most  
15 recently brought together in a volume was done by Columbia  
16 and they --

17           MR. BROOKS: That's right, the Columbia did  
18 that, under their study. We have ordered these publica-  
19 tions and they will be in our office very shortly and this  
20 has an index of similar provisions and where they are in  
21 each constitution and will include a copy of each of the





1 constitutions in each state.

2 THE CHAIRMAN: I think our research, though,  
3 has got to extract from those constitutions the appro-  
4 priate sections on local subdivisions and metropolitan  
5 forms of government as contemplated here, because many  
6 times you will find a constitution is so interrelated that  
7 one section will not fully cover all of the various powers  
8 that are available to the local governmental unit under  
9 one article, but they come from other articles throughout  
10 the constitution.

11 DR. BURDETT: Well, Mr. Chairman, I would make  
12 the suggestion, and Mr. Brooks can correct me on this,  
13 that it would be most helpful to us to deal with, to em-  
14 phasize states that have had similar heritage and similar  
15 patterns with ours, and one of the states I am thinking of  
16 is North Carolina which has a high similarity in the  
17 pattern. There is a great deal of local autonomy ex-  
18 pressed in the legislature. While I am not up to date on  
19 it, I gather there has been a great deal of change in  
20 North Carolina and a great deal of study of it at the  
21 universities.



1 MR. BROOKS: A great deal of study, but I am  
2 not so sure the pattern is as much similar as Virginia,  
3 insofar as Maryland has exceedingly strong counties and  
4 the emphasis in North Carolina has been municipal govern-  
5 ment and there they have rather strong local government.

6 DR. BURDETT: I was thinking of the voices in  
7 the legislature which come from the county delegations,  
8 as in Maryland, and I don't know how much it has been  
9 departed from in North Carolina.

10 THE CHAIRMAN: Let me make this comment. I  
11 think that moves on naturally into our third question for  
12 research, but before I get into that, which I will state  
13 in just a minute, let me have the comment of Mr. Thompson.

14 MR. THOMPSON: Thank you. I should like to  
15 underscore the suggestion of Professor Burdett because  
16 one of the areas I think in Maryland local government  
17 which has received a great deal of comment in recent  
18 years has been the area of annexation by municipal govern-  
19 ments, and certainly North Carolina is a state which has  
20 done a good deal in that area and quite recently and I'm  
21 not sure, in fact, but that legislation, that is to say,



1 legislation which provided for annexation has not indeed  
2 been responsible in large measure for the form which local  
3 government has taken in the direction in which it has gone.

4 THE CHAIRMAN: A great deal has been going on  
5 in Virginia, right across the Potomac River, by way of  
6 annexation, Arlington, Falls Church, and so forth, and it  
7 has not been without protest and difficulty; but it would  
8 be right interesting to really see how they have accom-  
9 plished the annexation and extension that they have  
10 managed to do. It has actually come from, I believe, the  
11 state level rather than interagreement, indicating that  
12 you've got to knock heads together in order to accomplish  
13 anything and the way in which it has been successful cer-  
14 tainly would be pertinent for our inquiry.

15 The third subject or question for study, as I  
16 indicated a moment ago, ties in with No. 2 and that is  
17 after you have gotten all the information contained in  
18 the fifty constitutions, that a study of the question of  
19 compulsory home rule in terms of the legal status of  
20 home rule, what powers does it specifically deny to  
21 legislatures, and whether or not home rule powers should





1 be enumerated in the Constitution; and also self-enforcing  
2 clauses and effect on small counties.

3 That gets further into detail, after you have  
4 gotten together some of the information. It seems to me  
5 that is moving in the direction of our particular respon-  
6 sibility because we certainly will have to -- we have  
7 already determined by agreement of the Committee that we  
8 will provide for compulsory home rule insofar as the  
9 governmental local subdivisions are concerned, both county  
10 and city. We have also decided that insofar as the agreed  
11 upon form of the local subdivision, it will be the county  
12 and the city and other civil divisions.

13 Now then, as we move on more specifically, we've  
14 got to really see what other localities and governmental  
15 units have done by way of what they have accomplished and  
16 we are going to have to make a choice between either a  
17 self-enforcing clause or a voluntary one and, there again,  
18 I think we all feel that we've got to have some further  
19 research and detailed knowledge.

20 Dr. Loevy, this is a little bit in your direc-  
21 tion here, because of some of the specific items that are



1 raised. Would you like to make a comment?

2 DR. LOEVY: Well, from the tenor of the luncheon  
3 that Jack Jones and I had, we were concerned here with  
4 something that was raised at the last meeting, just what  
5 is meant by home rule, and I really think you need someone  
6 with legal training to look at the concept of home rule  
7 as it is applied in Maryland; just what powers does home  
8 rule deny to the legislature.

9 He raised the point, and I agree with him, if  
10 we put in compulsory home rule without knowing just what  
11 we mean, we might get into some trouble. We may be taking  
12 powers away from the legislature that we do not want to,  
13 particularly in view of the fact that the tendency in  
14 local government has been to pass more and more functions  
15 up to the state level, I think, rather than to leave it at  
16 the local level. So, I think that is one thing that should  
17 be looked into, and this brings up then the question of  
18 enumeration.

19 If there is no set legal definition of home  
20 rule that has emerged from the pattern of court decisions,  
21 do we want to establish a definition in the Constitution





1 rather than leave it to the Legislature; and I think this  
2 is one of the major policy decisions this Committee has to  
3 make.

4 THE CHAIRMAN: Yes, and the policy questions  
5 will be taken up as the second part of the agenda, but,  
6 more or less, here, too, we are touching upon whether we  
7 are going to have an enumeration of powers to the local  
8 home rule unit or whether we are going to give to them the  
9 general power, that is, the power to enact any kind of  
10 legislation except that specifically denied in one way or  
11 another, either by the charter itself or by the Consti-  
12 tution or by the Legislature.

13 We have got to make a basic determination of  
14 which way we are going to write our constitutional pro-  
15 vision. As it is now in the Constitution, they have  
16 powers only specifically granted by the Legislature. We  
17 are either going to follow that or we are going to change  
18 it and come up with a grant of any and all powers except  
19 those specifically denied. So, I think, here again we  
20 ought to really get research started and see what really  
21 seems to be the proper basis upon which we can make our



1 determination.

2 MR. MELVIN: Mr. Chairman, that is what I had  
3 in mind when I suggested that this analysis of local  
4 government include a study of the present constitutional  
5 provision on home rule, and I agree that it probably would  
6 have to be done by those who are lawyers because it is an  
7 area in which there is considerable doubt among the many  
8 people I have talked to as to just exactly where the line  
9 is drawn under the present provisions.

10 THE CHAIRMAN: I think that is true. In this  
11 whole field of local subdivisions and, more or less,  
12 governmental setup, there is so much overlapping and inter-  
13 fold that you sometimes get lost in just exactly whether  
14 you are dealing with one form of home rule or another form  
15 of home rule, or just what really is included in the very  
16 idea of home rule and, as time goes on, I think you begin  
17 to find that it covers a tremendous breadth of govern-  
18 mental forms under that one caption; and to have some  
19 definition or appreciation of the fact that it does cover  
20 a wide range, where it may be metropolitanism, it may be  
21 federalism, it may be regionalism, it may be something



1 else, but it is in one form, in one way or other, a form  
2 of home rule.

3 It does not make the definition any easier,  
4 but at least it should give us a better understanding of  
5 it, and I think it makes it clear that we've got to have  
6 a definition to show what we are considering and is some-  
7 what of the background from which we are going to come up  
8 with our end product.

9 The fifth item on the list of questions is a  
10 study of the various approaches to metropolitan problems  
11 that can be taken in state constitutions.

12 Now, there again, what is to be understood and  
13 definition is going to be important, insofar as the basis  
14 upon which we are going to try and achieve the flexibility  
15 and the brevity of our eventual constitutional provision.

16 We've got to go, it seems to me, even though  
17 in the net result we come up with something that is quite  
18 brief, it may only be one page, we have got to have gone  
19 in depth before we come up with that final conclusion.  
20 As we do this, we may well achieve a way in which to pro-  
21 vide or write the constitutional provision that will





1 provide the elasticity of the future. It seems to me that  
2 we've already got the problem of metropolitan urban  
3 development flowing over into certainly Montgomery and  
4 Prince Georges Counties from the District of Columbia,  
5 from county to county, from cities within those counties.

6 I have in the back of my mind Takoma Park,  
7 the situation that we have right there, and the methods  
8 by which other similar metropolitan areas have met their  
9 problems, as well as a complete study, to enable us to have  
10 an appreciation of what we've got to try to take care of  
11 in the future is a complete necessity and it is one which  
12 is, again, I think properly a matter of assignment to one  
13 of our research people because it is going to take time  
14 and effort to get into it.

15 DR. BURDETT: This begins to say also that the  
16 research is needed to include what the state controls are  
17 now in local governments, both counties and municipalities.

18 THE CHAIRMAN: And, even further than that,  
19 what controls would be well to have.

20 DR. BURDETT: Right.

21 THE CHAIRMAN: Somewhere along the line,



1 because we are now again touching upon the area where  
2 great controversy can certainly arise and has to be  
3 solved in one way or another, and we are touching upon  
4 special commissions and we are touching upon special  
5 purpose districts and all manner and sundry related prob-  
6 lems.

7 DR. BURDETT: I use this word control very  
8 loosely. It illustrates the point you are making that  
9 home rule should not serve to prevent some forms of  
10 coordination and one which is fairly uncontroversial was  
11 brought up at a luncheon meeting at the Maryland Municipal  
12 League in Baltimore, in which Senator Malkus made the  
13 remark that he felt it is very important in Maryland for  
14 the Bar, if for no one else, and it is for others, that  
15 we have a law in this State which requires the publication  
16 of municipal ordinances in some kind of a single reference  
17 set. So that, if some of you are practicing at the Bar,  
18 you can find out what home rule provisions under the  
19 present Constitution have been enacted, let's say for  
20 Takoma Park.

21 THE CHAIRMAN: Right now, you are lost in a





1 complete wilderness.

2 DR. BURDETT: Theoretically, you can go to  
3 Karl Everstein's office, but this is inconvenient, to say  
4 the least.

5 THE CHAIRMAN: I understand that that statute has  
6 not been very productive insofar as he was concerned. Mr.  
7 Thompson?

8 MR. THOMPSON: Mr. Chairman, I agree with that.  
9 I understand it has not been very productive, and I have  
10 two points relative to what you and Professor Burdett have  
11 been saying; one, with respect to this very point you are  
12 discussing, metropolitan government.

13 The study which I referred to a few moments  
14 ago in Wicomico County with respect to the form of govern-  
15 ment in that county and the City of Salisbury, they, the  
16 study group, has reviewed the metropolitan government  
17 experiments, you might call them, in the United States.  
18 For example, in Dade County, Nashville, and even in Canada,  
19 Toronto and other areas, these are studies which exist  
20 and perhaps this Committee might well use as a source of  
21 materials and might find it quite helpful.



1           Then with respect to the point which you and  
2 Dr. Burdett were commenting on jointly, the Maryland  
3 Municipal League now has under way an effort, if it is  
4 sufficiently supported by the municipalities in this State,  
5 to combine in a single volume all laws pertaining to  
6 municipalities and this could conceivably cover that which  
7 you and Professor Burdett have been talking about, and at  
8 this point a determination has not been finally made as  
9 to how far it will be, for the simple reason we have not  
10 completed our survey; but we are working in that direction.  
11 Thank you.

12           THE CHAIRMAN: I think then our research can  
13 tie in with your present efforts, quite obviously, but it  
14 is clear, I believe that we've got to have some research  
15 into the approaches to the metropolitan problems that have  
16 been and can be undertaken in a constitution.

17           The sixth question to be assigned out moves in  
18 the other direction; a study of the small cities of  
19 Maryland to determine which are exercising real powers,  
20 how those powers relate to the counties in which they are  
21 located, and whether counties could easily take over their



1 functions; also, a study on what is being done about small  
2 cities in other states.

3 Now, inherent in that, of course, is the con-  
4 templation that some of these small units will be eliminated  
5 and that we move toward an annexation or consolidation of  
6 some of these small municipalities into a larger municipal  
7 group; but, certainly, we've got to know how they are set  
8 up before we can do or even contemplate that as a possi-  
9 bility. Mr. Thompson?

10 MR. THOMPSON: Mr. Chairman, this is a point  
11 in which I would agree with a remark that was made earlier  
12 by a member of your Committee, to the effect that it is  
13 not necessary for this committee to go into great detail.

14 I think, at this point, the authority ought to  
15 be provided in the Constitution for any such action to be  
16 taken, but I would think that the Constitution is perhaps  
17 the place only to provide for the basic authority and not  
18 to provide for the elimination or the construction.

19 THE CHAIRMAN: I think that raises an inter-  
20 esting question which we certainly all have to be con-  
21 sidering. It seems to me, we've got two functions. Not





1 only do we come up with a suggested article in the Con-  
2 stitution, but, after all, we are a Committee of a  
3 Commission which has been appointed for the purpose of  
4 making a study and then, eventually, our product is going  
5 to go to a convention.

6 We have got to compile all of the information,  
7 so that it is there and available for that convention,  
8 so that they do not have these questions that we are  
9 dealing with now, because they have the answers right  
10 there in front of them; and that is why I had asked for  
11 a listing of questions for research in order that we get  
12 the material that is there, so that somebody else doesn't  
13 come up with a similar question, involving time and delay  
14 in getting it together.

15 DR. BURDETT: You will find in Miss Spencer's  
16 study that towns or municipalities are not named, but they  
17 are typed by population size and one gets the impression  
18 from that study that a great majority of the municipal  
19 corporations in this State are quite small.

20 THE CHAIRMAN: And we have the problem of how  
21 we are going to provide for classification by population



1 or --

2 DR. BURDETT: Also authorize classification,  
3 rather than provide for it.

4 THE CHAIRMAN: It means we are going to be  
5 changing the existing provisions in the Constitution for  
6 something new.

7 DR. BURDETT: Not really, because the existing  
8 Constitution provides for municipal classifications, but  
9 the Legislature has decided that there is one classifica-  
10 tion in Maryland.

11 MR. THOMPSON: Precisely.

12 DR. BURDETT: I've forgotten how many. Three  
13 or four?

14 MR. RATCHFORD: Four.

15 THE CHAIRMAN: And also that you can classify  
16 counties into four separate classifications.

17 MR. RATCHFORD: That would be under the Code.  
18 May I comment on this for a minute, because it is a para-  
19 doxical situation. I think Mr. Brooks would probably want  
20 some study on this.

21 THE CHAIRMAN: And it would educate us, too.





1 MR. RATCHFORD: Actually, in Maryland, it's  
2 funny, but many of the small cities, real small, 250  
3 people, 200, perform a wide range of municipal services  
4 to their citizens and they are very vital. I am thinking  
5 of towns on the Eastern Shore, particularly towns like  
6 Millington with 300 people, Galena with 250 people, who  
7 operate sewage plants, water plants, plan zoning, because  
8 they are predominantly in rural counties and they are the  
9 only ones who can do it.

10 On the other hand, the larger towns in Maryland,  
11 such as frequently found in Prince Georges --

12 THE CHAIRMAN: College Park, for example.

13 MR. RATCHFORD: And College Park, for example,  
14 provide nothing and these are the ones that could perform  
15 services, whereas the small towns on the Eastern Shore  
16 carry on the full brunt of local government because there  
17 the counties are more oriented to health and education and  
18 so on. So, primarily, one of our weaknesses with classi-  
19 fication in Maryland is that it doesn't mean anything,  
20 because if you classify all cities over 15,000 as having  
21 important functions, half of those have no function,



1 except as to roads and trash collection.

2 So, this is the problem. While you look at  
3 classification, population, while it is the easiest factor  
4 is really the one that does not lend itself to the proper  
5 method to get what you want. I am excluding, and of  
6 course, there are exceptions, the large cities, Cumberland,  
7 Hagerstown, Annapolis, which do provide service; but cer-  
8 tainly the ones located in the Washington metropolitan  
9 area and the larger towns do not do it. It is the strange  
10 paradox we have in Maryland where your small cities or  
11 small towns frequently do more than what College Park  
12 does, for instance. It is a strange paradox, but one we  
13 live with.

14 MR. THOMPSON: Mr. Chairman, I would say in  
15 substance I agree with what Mr. Ratchford says and I think  
16 what he says, if he didn't say it expressly, and perhaps  
17 I didn't notice it, but at least by implication, if there  
18 is to be a categorization, it perhaps be best by function  
19 and not by size. I have run into this problem many times  
20 before.

21 MR. RATCHFORD: Or by area might be another way.



1 Those within a metropolitan area might be an easier classi-  
2 fication.

3 MR. THOMPSON: I think this is a problem we  
4 will run into when you get to consider your policy ques-  
5 tions, also, because this is also heavily weighted with  
6 the numerical population approach, which I cannot help  
7 but agree with my colleague, Mr. Ratchford.

8 THE CHAIRMAN: Yes. I think you begin to see  
9 why I put the questions first before getting to the policy  
10 issues or questions, because it directs our thinking, I  
11 believe, in the direction of what we've got to know before  
12 we can decide these questions, and a lot of it does re-  
13 quire a good deal of hard solid research and that means  
14 time that I do not think we, as a committee, have the time  
15 to give it. So, it seems properly to be a matter for  
16 research and assigning out, because it is going to tie  
17 in directly with the issues which we are going to have to  
18 determine.

19 The seventh question is now moving in another  
20 direction, a study of the effect on bond issues of changing  
21 county lines, creating metropolitan governments, et cetera.





1 To be interrelated with committee on finance.

2 Dr. Loevy, would you make a comment on that?

3 DR. LOEVY: Yes. At lunch the other day, Jack  
4 Jones raised this question, that counties issue their own  
5 bonds and back them up and he raised the question, when  
6 you start changing county lines or creating metropolitan  
7 governments, he said this problem came up with the Port  
8 Authority and the Metropolitan Transit Authority, you  
9 start changing boundary lines and you affect bonds.

10 I think the reason Mr. Jones raised this ques-  
11 tion is because he is in the business of these bond issues,  
12 but I certainly think that it is worth looking into and  
13 checking with the committee on finance. We really have to  
14 know how they are going to finance on the operation of  
15 local government or how their thinking is developing be-  
16 fore we start altering or thinking about altering the  
17 structure of local government too widely.

18 THE CHAIRMAN: It certainly appears obvious that  
19 the value of a bond is going to be dependent upon the  
20 credit of the issuer of the bond and, if you start changing  
21 the lines, which naturally is going to mean a change of



1 the credit setup, it's going to have some kind of effect,  
2 and I agree we should have some clear appreciation of what  
3 change -- and I am thinking in terms of specifics, what  
4 change would actually come about and affect bond issues  
5 of Prince Georges, if all of a sudden we took the metro-  
6 politan area around Washington and moved it over and con-  
7 solidated it with the metropolitan area of Montgomery and  
8 then took the remainder of Prince Georges and tied it into  
9 Charles County.

10 It seems to me that you would get a right clear  
11 change in the credit in back of the bond issue, and cer-  
12 tainly as to whether or not you would assign it to the  
13 metropolitan or to the rural division that I am speaking  
14 of there, or what exactly you would do with it, how you  
15 would handle that particular question.

16 MR. RATCHFORD: I think it is an interesting  
17 one, but I doubt if it is insurmountable. It wasn't when  
18 Nashville and Davidson Counties were consolidated. It was  
19 a problem, but they handled it because the city had bonds,  
20 the county had bonds and now they have one government  
21 responsible for both bonds. It would be a tricky one,





1 but I don't think that is going to be quite as sticky as  
2 some of the other ones.

3 THE CHAIRMAN: I don't know that we've really  
4 quite got that question sufficiently stated to really go  
5 as wide as I think we would want it to go. I think that  
6 here we would want to broaden that question into a study  
7 of financing generally, not just as it would affect bond  
8 issues, but the whole question of financing, if and when,  
9 as we are going to have to consider later, whether or not  
10 we are going to give the financing power to the local  
11 governmental units or just exactly what we are going to do  
12 by way of financing provisions, or whether we are going  
13 to keep it back up in the Legislature. I think we've got  
14 to broaden this one, Dr. Loevy, a little wider than merely  
15 the effect of bond issues.

16 DR. LOEVY: This is the whole question of  
17 financing local government.

18 THE CHAIRMAN: Yes, and really have some  
19 research done not only -- I'm thinking of it specifically  
20 insofar as what, if anything, has been done insofar as  
21 financing within the State itself and by other units



1 outside of the State.

2 The eighth question is a study of how removing  
3 the Baltimore City Charter and enabling provisions from  
4 the Constitution will affect Baltimore City.

5 I think we've definitely got to know that and  
6 that is a study in itself.

7 MR. RATCHFORD: It's according to the effect on  
8 the City government or on the City politicians?

9 THE CHAIRMAN: I think we've got to be practical  
10 in the final analysis with what we come up with and we've  
11 got to determine that what we are going to suggest is  
12 feasible. It is a matter I touched upon with John Brooks  
13 a little earlier, saying we could rewrite this Constitution  
14 in five minutes, actually, but whether or not what we write  
15 is going to be acceptable or is feasible is a very, very  
16 important part of our consideration and we've got to know,  
17 really, I think, here what removing the Baltimore City  
18 Charter, what effect it is going to have and what opposi-  
19 tion it is going to engender.

20 It is tied in, for example, in the same way  
21 in making home rule mandatory. What political effect is



1 that going to have in Prince Georges County. I think  
2 there has been a movement and it is clearly evident as  
3 the years have gone by in the direction of acceptance of  
4 home rule, but you still have a very, very strong, well-  
5 organized group that just doesn't like the idea. Mr.  
6 Thompson?

7 MR. THOMPSON: Mr. Chairman, I believe it is  
8 evident to anyone reading the Constitution and the Annotated  
9 Code of this State immediately that there are numerous  
10 special provisions made for the City of Baltimore. It is  
11 treated as an entity virtually unto itself and virtually  
12 the only kind in the State and it would appear to me it  
13 might be worthy of consideration and note when one is  
14 discussing the possibility of classification or categori-  
15 zation or however one may word that approach, of creating  
16 a system which would include Baltimore City as part of an  
17 over-all system, rather than regarding it as completely  
18 without and beyond, and I think this may have the advantage  
19 of integrating the governments and providing for more  
20 intergovernmental cooperation, if indeed every local  
21 governmental entity in the State is part of a State of





1 Maryland government.

2 THE CHAIRMAN: I think that really is quite  
3 true and I think a part of our study should certainly go  
4 in that direction. We are really seeking a degree of  
5 uniformity here and it really has been another one of  
6 these paradoxes that were referred to in Maryland, that  
7 Baltimore City has always been unto itself and I think  
8 we have made great strides in the direction of eliminating  
9 that in the thinking of the counties in relation to the  
10 city and the city in relation to the counties, and cer-  
11 tainly something as fundamental as the governmental setup  
12 would be a tremendous stride in that very direction and  
13 really should be accomplished.

14 There is no reason why it has any different  
15 problems now than what we are dealing with in other areas  
16 and, actually, they have dealt with a lot of these prob-  
17 lems in ways which would be helpful to other areas. Dr.  
18 Loevy?

19 DR. LOEVY: Well, I was going to say the  
20 Constitution is very vague on this. There is this special  
21 charter for the City of Baltimore in the Constitution, but



1 Baltimore City is also provided for in the home rule  
2 charter, although it appears Baltimore City would have to  
3 have a charter movement there. It is very vague. Does  
4 anyone know what the relation is here? Apparently,  
5 Baltimore City could abandon its present charter and  
6 create a new chartered government under the home rule  
7 county charter provision.

8 MR. MELVIN: Wasn't that charter passed by the  
9 Legislature?

10 THE CHAIRMAN: The Baltimore City Charter?

11 MR. MELVIN: Yes.

12 THE CHAIRMAN: Actually, was it passed by the  
13 Legislature or by resolution? It was a demand. Of course,  
14 the constitutional provision is on demand, the Mayor will  
15 then forthwith select his board and then provision is made  
16 for other ways of selecting members and then they get  
17 together and the question is submitted, whether or not a  
18 charter will be written and the personnel is selected at  
19 the same time.

20 MR. RATCHFORD: The City had the charter before  
21 11A was enacted. They had a City Charter.





1 THE CHAIRMAN: What did they do?

2 MR. RATCHFORD: They just revised their City  
3 Charter about two years ago pretty substantially.

4 THE CHAIRMAN: Then what procedure did they go  
5 through by way of complying with the constitutional pro-  
6 vision, if any?

7 MR. RATCHFORD: The Mayor created a charter  
8 commission and it was put to the City Council and the City  
9 Council adopted it and put it to the voters and the voters  
10 approved it.

11 THE CHAIRMAN: So, they did follow the pro-  
12 cedures set up in Article 11A.

13 MR. RATCHFORD: To some degree, but the legal  
14 relationship in Baltimore City is complex, to put it very  
15 mildly, because --

16 MR. MELVIN: They adopted their charter original-  
17 ly pursuant to enactment of the Legislature, before 11A  
18 was out.

19 DR. LOEVY: It is historical, that 11A differen-  
20 tiates between Baltimore City and the counties.

21 MR. RATCHFORD: In the procedures, that you do



1 not have to get petitions.

2 DR. LOEVY: Let me ask you two gentlemen at this  
3 point, what would be your opinion in making Baltimore City  
4 just another home rule county?

5 MR. RATCHFORD: Again, I want to answer this  
6 from a theoretical point of view. From a theoretical  
7 point of view, I think today it has a reasonable rela-  
8 tionship because of not only the size of the many larger  
9 counties which are very close to the City, as far as  
10 population, but politically there are all types of rami-  
11 fications. For example, excluding anything else, what  
12 would you call it? Baltimore City County? This would  
13 confuse it with Baltimore County, and to make any one of  
14 them give up their name would take an act of God.

15 The State has virtually done it in many in-  
16 stances because it says the County and City of Baltimore  
17 may do this, and this is how they enact legislation, but  
18 to try to get rid of that name Baltimore City, I don't  
19 know how you would do it. Even though it may have all the  
20 authority of a county or be considered a county, I don't  
21 think you will ever change the name of Baltimore City.



1 THE CHAIRMAN: Actually, does that make too  
2 much difference, really?

3 MR. RATCHFORD: I don't think a name makes too  
4 much difference, where you can slide them into some type  
5 of agreement.

6 THE CHAIRMAN: It gives a degree of satis-  
7 faction to the writers to have a consistency of nomencla-  
8 ture, but whether or not it really makes a difference  
9 insofar as a way of living which, after all is said and  
10 done, is the whole purpose of a governmental setup seems  
11 to me to be --

12 DR. LOEVY: But we have to study it, though,  
13 since Baltimore City does have all these independent pro-  
14 visions. In rewriting the Constitution, I don't think we  
15 want to rewrite all of these various independent pro-  
16 visions.

17 THE CHAIRMAN: I think that is part of the  
18 scope of the study we are contemplating here.

19 MR. RATCHFORD: Of course, some of the pro-  
20 visions in the City may be well not in the Constitution,  
21 such as offstreet parking, which is absurd to have in a





1 constitution, the way we have it today, at least, if you  
2 go by a model type constitution.

3 THE CHAIRMAN: I don't think it is trespassing  
4 upon the responsibility of this Committee to say now that  
5 I think the general thinking of all of the members of the  
6 Committee is that much of that material is going to be  
7 eliminated and what we are hunting for -- well, we want to  
8 be certain that we have considered all of the various  
9 aspects as we undertake to do just that, apply the knife.

10 DR. BURDETT: It is going to be eliminated from  
11 the Constitution, but not repealed.

12 THE CHAIRMAN: Exactly, and there, of course,  
13 we hope, too, by the way in which we rewrite the Consti-  
14 tution and accomplish the Constitution and rephrasing the  
15 actual responsibility and providing for the exercise of  
16 function, that better legislation can come out in improve-  
17 ment, as well as what is existent. There are many good  
18 laws that really have long since served their functions  
19 and ought to be taken out of the statute books somewhere.

20 Well, I think we are satisfied that that is an  
21 important question to be researched and we ought to have



1 further information.

2 The ninth question is a study of how other  
3 states have solved the problem of the creation of new  
4 units of local government.

5 That will tie in a great deal, of course, with  
6 questions 2 and 3. Nevertheless, I think we may well want  
7 to, as we move with questions 2 and 3, give further  
8 assignment, so that we boil it down to the pinpointing of  
9 solutions which have been adopted insofar as other states  
10 in solving the problem of local government creation.

11 MR. THOMPSON: Mr. Chairman, I am not certain  
12 exactly what is meant by units of local government, but I  
13 know one interpretation which might be placed upon it would  
14 be to include new town legislation, for example. Now,  
15 this does exist in other states.

16 I think it is extremely important in the State  
17 of Maryland at this time. We have already seen the prob-  
18 lems created by the development of an area such as  
19 Columbia, in Howard County. What should be its form of  
20 government? It seems to me that any constitutional pro-  
21 vision should at least be of sufficient breadth and scope





1 to allow the provision or, in fact, even to suggest pro-  
2 vision for the type of government for cities which are  
3 going to be created all over, not only in Maryland, but  
4 in other parts of the United States, such as Resta, in  
5 nearby Virginia, and since Maryland undoubtedly would be  
6 a part of this megatropolis and there will ultimately, I  
7 suppose, be a single urban area between Baltimore and  
8 Washington, D. C.; this question of new unit legislation  
9 or new town legislation, or whatever, should be provided  
10 for in the Constitution.

11 THE CHAIRMAN: Yes.

12 DR. BURDETT: We have the question, and where  
13 we are going to have to face it, whether or not a creation  
14 of a new municipal corporation such as Columbia must  
15 require the consent of the County Commissioners of the  
16 county, as under the present law.

17 MR. RATCHFORD: Or require 300 people be there,  
18 which is the other stumbling block. The general State law  
19 requires you cannot incorporate a place without 300  
20 people. Obviously, Columbia hasn't anyone living there.

21 THE CHAIRMAN: They haven't finished building



1 the houses.

2 MR. RATCHFORD: They haven't started building.  
3 You get into the question of how you can create under the  
4 present system. Apparently Columbia is going to become  
5 like Towson or Catonsville in Baltimore County, as far  
6 as the County goes; but it does raise the problem, and  
7 not only am I thinking of that, but the problem that at  
8 one time you are going to get into the affect of eliminating  
9 duplicating systems and overlapping of governments. How  
10 can you provide a system without going to the huge govern-  
11 ment form where it is hard for a citizen to voice an  
12 opinion on. In other words, whether or not there should  
13 be some type of federalism on a local unit basis, instead  
14 of, in other words, having a broad level and sub units  
15 answering to a board which is, again, the Toronto approach.  
16 This, I think, is the problem, how much do you put in the  
17 Constitution? I don't know. I doubt if you want to put  
18 too much in, but at least you want to have some authority  
19 where it can be done as you mentioned, so we are not  
20 building an inflexible document.

21 THE CHAIRMAN: This really gets us into one of



1 the policy issues we are going to have to determine and  
2 that is whether or not you are going to give the authority  
3 for the creation of new units to the legislature or  
4 whether you are going to provide for it by agreement  
5 among localities and Judge Adkins, you will remember at  
6 the last meeting, appeared to be very strongly of the  
7 thinking that it should be agreed among the localities  
8 to create new units, rather than necessarily stemming from  
9 the Legislature and I think it is evident that we've got  
10 to have a study here of how other states have solved this  
11 problem of creating new units and that will be helpful in  
12 determining how we are going to make provision for it.

13 The tenth item is a study of how other states  
14 have resolved the question of city-county conflicts.

15 There again, I think we are interested in  
16 knowing what others have had by way of experience in  
17 connection with this problem. We are running into the  
18 problem. We are going to run into it more and more as  
19 we try to make provision for it in the constitution, and  
20 we want to know what others have done. Mr. Thompson?

21 MR. THOMPSON: Mr. Chairman, I might add,





1 although I certainly have overlooked it in the course of  
2 going through these questions, that we might also give  
3 some consideration to the question of whether municipal --  
4 and with the permission of Mr. Ratchford, I might say  
5 subject to his comment -- county-state conflicts, because  
6 there are certain areas in which such conflicts exists,  
7 in fact, and this is perhaps something that might be a  
8 matter of concern.

9 THE CHAIRMAN: I might say, Mrs. Freedlander  
10 is absent today, and I want to more or less acquaint the  
11 other members of the Committee, and I would also like to  
12 have your comments, Mr. Ratchford, in a few minutes, when  
13 we touch upon this question of conflicts between munici-  
14 palities-county, county-state and going back to some of  
15 the points we were touching upon a little earlier, there  
16 comes a time when the appreciation of some central unit,  
17 commission, district, department or some centralized  
18 agency becomes almost a necessity, both from the point of  
19 view of providing services and for the resolving of con-  
20 flicts and for the progress point of view.

21 I think we ought to include either as an



1 additional subject for research or more or less in con-  
2 junction with this question, by enlarging it, what has  
3 been done by way of establishing a department of state  
4 and local affairs and, in conjunction with that, what if  
5 any provision has been made in any constitution of any  
6 state for the creation of a department of state and local  
7 governmental affairs.

8 Now, Mrs. Freedlander has brought to my atten-  
9 tion the efforts being made in that direction in Pennsyl-  
10 vania and apparently, right now, there is a bill which is  
11 before the Governor for signature setting up a department  
12 of community affairs, or some such name, and I asked her  
13 to send a copy of that bill and it did reach me by the  
14 last mail before I left the office, and it is certainly  
15 one where I think not only what is being done in Pennsyl-  
16 vania, but what is being done or has been done in any other  
17 state would certainly be a matter for us to determine.

18 By an article which appears to be part of a  
19 Senate Bill No. 1144, Session 1965, the bill before the  
20 Governor is one which bears the caption, Powers and Duties  
21 of the Department of Community Affairs, Its Departmental





1 Boards, Bureaus and Agencies, and then it goes on to set  
2 up what the function and scope of powers of that depart-  
3 ment would be.

4 Without going into detail, it includes, for  
5 instance, the furnishing of assistance to political sub-  
6 divisions on advice and enforcement of codes and ordinances.  
7 It includes the rendering of services directly to the  
8 local units, local governmental units. It provides for  
9 the supervision and administration of various programs  
10 of the State.

11 It more or less, I think, sets up a chain of  
12 command where, with the organization of the new Federal  
13 Department of Urban Affairs, we have something in the  
14 State of a comparable nature which would then be a  
15 channelizing and then spreading out from the State Depart-  
16 ment, or rather, the Department of the State into the  
17 various local units of government.

18 MR. MELVIN: Is this a constitutional provision  
19 in Pennsylvania?

20 THE CHAIRMAN: No. This, actually, as I said,  
21 was a statute of the General Assembly and I have it in the



1 form of the Senate Bill. Mr. Thompson?

2 MR. THOMPSON: Mr. Chairman, just for the  
3 record, I would like to mention that I have had some  
4 correspondence on this general subject with an official  
5 of the State of Massachusetts which is, of course, avail-  
6 able to this Committee and this subject, or at least a  
7 similar subject, that is, the creation at the state level,  
8 perhaps in the office of the Governor or elsewhere, of an  
9 office to deal with local government problems and further  
10 for the record I would indicate that at the 17th Annual  
11 Conference of the Maryland Municipal League, our own  
12 Congressman-At-Large, Carlton Sickles, in an address,  
13 suggested the creation of such an office.

14 I do, in fact, have copies of his talk in which  
15 he refers perhaps in some detail to this, which I would be  
16 pleased to make available to the Committee.

17 DR. BURDETT: That really could be left in the  
18 statute.

19 MR. THOMPSON: I would think so, but, nonethe-  
20 less, it would appear to me not entirely unwise to make  
21 up, if not a provision, a footnote or indication of some



1 sort that this is possible and perhaps encourage it in  
2 some way. I don't know, frankly, just what the device  
3 would be with respect to the preparation in the Constitu-  
4 tion.

5 THE CHAIRMAN: Certainly, it would seem that  
6 we are thinking in terms of language that would be flex-  
7 ible enough for it to be done, to be accomplished; at  
8 least, we certainly want it to be a matter considered and  
9 within the scope of our consideration here, so that if  
10 what we are doing, the ground that we are covering is  
11 eventually studied over again, the germ has been seeded  
12 and maybe we can find some more effective way of pushing  
13 the growth of that germ.

14 MR. RATCHFORD: Mr. Chairman, if I may load  
15 Mr. Brooks with some more research, he might want to check  
16 with the State of New York which has had an office of  
17 local government now in the Governor's office for a number  
18 of years and Mr. Moore was director of it. I know the  
19 people up there who work for the counties are very pleased  
20 with it. They think it has performed a very useful  
21 function.





1 I might also say that the Advisory Commission  
2 on Intergovernmental Relations has recommended this as  
3 part of its suggested State legislation for a number of  
4 years. Again, this is readily available from the Advisory  
5 Commission. Personally, I have some reservations about it,  
6 but as it has been indicated, it is primarily a statutory  
7 type of thing, but it would be useful and New York, I  
8 think, has had more experience than any other state on  
9 the operational level, to the best of my knowledge.

10 So, as I say, we will give Mr. Brooks a few  
11 more people to write to and check with.

12 THE CHAIRMAN: I would like also included in  
13 our study just exactly what we have done here in Maryland  
14 along that line. Frankly, I just do not know. It is  
15 something I would want to know and do feel would be im-  
16 portant. What actually do we do at the state level inso-  
17 far as similar assistance to local units, other than Karl  
18 Everstein's availability, which hasn't been taken advan-  
19 tage of.

20 DR. BURDETT: And Paul Cooper.

21 THE CHAIRMAN: Yes.



1 MR. THOMPSON: Mr. Chairman, I might say I am  
2 certain Mr. Ratchford is capable of enlarging considerably  
3 on this very brief remark, that I think the Maryland  
4 Municipal League and I also believe that Mr. Ratchford's  
5 organization are contacted and asked quite frequently  
6 by the State and by the government to appoint members to  
7 various State committees. So that, in some sense, I  
8 believe the two organization, and I say this in the  
9 broadest sense, I think may be regarded as quasi-governmental  
10 in a sense, and in that way, I think, to answer your ques-  
11 tion, what does Maryland do, it does that, in the sense  
12 of having contact with local government.

13 MR. RATCHFORD: The university has also been a  
14 great help to the cities and counties.

15 THE CHAIRMAN: Dr. Burdett, what can be done  
16 along this line?

17 DR. BURDETT: The University has now what is  
18 known as the Maryland Technical Advisory Service which  
19 renders assistance to any city or any county upon its  
20 request on matters of ordinance, codification, administra-  
21 tive organization and planning, project arrangements which





1 might be summarized by saying that the University doesn't  
2 attempt to do the job, but it attempts to work with the  
3 unit of local government on how the job might be done;  
4 in other words, to set up the arrangements for it, to make  
5 the basic plans for it and carry it out.

6 That involves a good bit of specific coopera-  
7 tion with the local units of government.

8 THE CHAIRMAN: Well, of course, I think what we  
9 are talking about would have a little more positive  
10 function than that, and what has been done in other  
11 states. Now, we have touched upon Pennsylvania, New York,  
12 Massachusetts. What has been done in other states would  
13 certainly be quite important.

14 DR. BURDETT: Now you are getting to quite a  
15 fundamental matter. I gather that the tradition in  
16 Maryland generally is to be of assistance and to be of  
17 good fellowship with local governments, but not to con-  
18 trol them in any matters of policy within the law. In  
19 Pennsylvania, I gather the situation is quite different.  
20 One of our staff alumnus is a city manager in Pennsylvania  
21 and he says the amount of State regulation and actual



1 State inspection is, to a Marylander, quite a new exper-  
2 ience, but this becomes quite a fundamental question as  
3 to whether or not that can be provided in the Constitution  
4 or whether or not it would simply be permissible. It is  
5 undoubtedly permissible now, I suppose.

6 THE CHAIRMAN: Let's take a short recess at  
7 this point.

8 (At this point there was a short recess.)

9 THE CHAIRMAN: Now that we are back on the  
10 record, may I ask for any additions or suggested addi-  
11 tions of research questions?

12 MR. THOMPSON: Mr. Chairman, do we simply by  
13 your statement on the record before extend this latter  
14 question to include the relations between city and the  
15 state and the county and state, or is it necessary to  
16 make that statement as a separate enlargement at this  
17 time?

18 THE CHAIRMAN: No, I think it is a suggestion  
19 that clarifies the discussion and I think really could  
20 be included in this study and in this assignment, and we  
21 can more aptly phrase the question before it is actually



1       formed out.

2               Now, I do think we ought to be on the record  
3 with respect to some kind of a time schedule for the  
4 accomplishment of this research and there, John, I'm going  
5 to ask you for your comment. When do you think we can  
6 start getting organized, with the help of Jack Jones, on  
7 our reports and, Dr. Loevy, in assigning out these ques-  
8 tions and what actual persons or means do we have for  
9 accomplishing it?

10              MR. BROOKS: We have some research assistance  
11 available as of February 1st, and that is just next week.  
12 Now, whether or not we can utilize all of them available  
13 for these subjects remains to be seen. We will probably  
14 know by next week, in that we will have a better idea  
15 what other demands will be on these research assistants,  
16 but I would say we have available persons who can go to  
17 work on these within a week and I would think in some of  
18 these areas we could get reports within six weeks, maybe  
19 some sooner.

20              Now, some of this material is going to be  
21 available, I think, relatively immediately, just as soon





1 as the mail arrives, and those we will begin circulating.

2 Now, whether or not you will have sufficient  
3 material to base your decisions on by any particular day  
4 is a little difficult to say at the moment.

5 THE CHAIRMAN: I would like an expression of  
6 the members of the Committee. My thought was that the  
7 way in which we would get the benefit of the research on  
8 these questions would be that the individuals to whom  
9 they are assigned or at least one individual be invited  
10 to be present to give us a general appraisal of the  
11 accomplishment and the results. So that we could set up  
12 as part of the agenda of our meetings the appearance of  
13 someone to give us the results or at least some evaluation  
14 of it, rather than having to read all that material or  
15 have the responsibility of reading all that material which  
16 we may not be able to get read.

17 So, as soon as any one question has been  
18 researched and the result is available, I would like to  
19 have someone who has been directly associated with it  
20 appear before the Committee and be advised to give us in  
21 fifteen minutes or so a synopsis of the results. I think



1 in that capsule form, and even though it may be capsule,  
2 at least we will get the benefit of it as we move along.

3 Does anyone else have any thoughts?

4 MR. MELVIN: You mean the person making the  
5 study would not write up any report?

6 MR. BROOKS: We will ask them to write it up.

7 THE CHAIRMAN: Yes, they will write up a full  
8 and complete report which will be a part of our work  
9 product, but I am talking about for the benefit of us,  
10 as we more or less wrestle with these issues and eventual-  
11 ly have to finally decide what we are going to write as  
12 part of the Constitution, we get a capsuled digestion and  
13 it may be that it might be best to have two or three  
14 people and have a panel discussion among them for fifteen  
15 or twenty minutes; but I am thinking of trying to find  
16 some way of getting available to us, other than massive  
17 reading, the information which we've got to have.

18 MR. BROOKS: We will make an attempt to have  
19 present at the meetings, in the subjects to be discussed,  
20 the person who does the research, in order to have them  
21 as a resource person.





1 THE CHAIRMAN: Now, gentlemen, I think the  
2 next thing we've got to do is move into the second phase  
3 of our agenda and that is a review of the policy questions  
4 to be submitted to the full Commission. I'm sorry, we  
5 do not have the minutes of that last meeting to be read,  
6 but I am going to ask Dr. Loevy from his notes to briefly  
7 review the ground we covered at the last meeting for the  
8 benefit of all.

9 DR. LOEVY: At the last meeting, the general  
10 question was again what should be the proper unit of local  
11 government. Reporter Jones suggested that we should look  
12 at local government problems, in other words, see just  
13 what problems local governments were facing, before  
14 deciding what unit of government would be best for the  
15 State of Maryland.

16 Judge Adkins suggested that in his opinion the  
17 best form of government would be to keep the counties and  
18 that any metropolitan form of government should be  
19 strictly voluntary. He opposed the idea of pinning any  
20 form of metropolitan government down in constitutional  
21 language.



1 Chairman Clagett said that he detected general  
2 agreement on the part of the Committee members that the  
3 county should be the basic unit of government, as of that  
4 point. He agreed with Judge Adkins not to pin down the  
5 future of what local governments should look like too  
6 explicitly in any proposed constitutional revision. He  
7 also at this point raised the question, he said the  
8 Committee must face up to the question whether local  
9 government, whether the creation of local government  
10 should be made in the Legislature or whether power to  
11 create new units of local governments should be given to  
12 local bodies themselves.

13 Consultant Loevy raised the question of abolish-  
14 ing small cities and the further question of just how many  
15 small cities there were in Maryland and to what extent  
16 their powers existed. Mrs. Freedlander agreed on the  
17 abolition of small cities as being in many cases largely  
18 unrealistic units of government. Consultant Loevy at  
19 this point raised the question of a definition for the  
20 concept of home rule, whether home rule powers should be  
21 clearly laid out in the Constitution or should be left to



1 the definition of the State Legislature.

2 Judge Adkins said at this point the creation  
3 of local government should be local, he felt, rather than  
4 in the Legislature. He supported giving the local units  
5 the power to create new local units. At this point,  
6 Chairman Clagett suggested that this question might be  
7 one of the items to be discussed at the next meeting.

8 At this point, the question of a population  
9 figure with compulsory home rule was brought up. Member  
10 Melvin said that he would like to see home rule tied to  
11 a population figure, so that the very small counties  
12 could not adopt home rule if they did not wish it. He  
13 said that he felt that the size of the county was a very  
14 important factor here and at this point Chairman Clagett  
15 summed up by saying he felt the consensus of the Committee  
16 at this point was to have compulsory home rule, but he  
17 did feel that the question of small cities should be in-  
18 vestigated further.

19 THE CHAIRMAN: Thank you, Dr. Loevy. Does any-  
20 one else have any additions or corrections or changes? Of  
21 course, they will be later written up in detail, but I





1 think that gives our two visitors some idea or feeling  
2 of what our consideration has been up to this point and  
3 where we stand, and I might further state that what we've  
4 got to do as of this meeting today, we've got to agree  
5 that the policy questions to be submitted to the full  
6 Commission are adequately stated in the list, some nine  
7 in number, with some subdivisions which have been pre-  
8 viously circulated to each of the members; and I believe,  
9 Dr. Burdett, you were able, or were you able to give a  
10 copy of that suggested list to --

11 DR. BURDETT: Yes, they have them.

12 THE CHAIRMAN: Because our time is running  
13 somewhat short, and I want to take full advantage of any  
14 thoughts that our visitors may have. I am going to  
15 approach the question broadly rather than in detail and  
16 I am going to ask Mr. Ratchford this question.

17 As you were given this list of policy questions  
18 and as you reviewed it, what particular items struck a  
19 responsive chord in your mind and what comments by way of  
20 that particular item would you like to make at this time?  
21 I have given you a broad one, and I will give you five



1 minutes in which to answer that question, maybe extending  
2 it another five, and Mr. Thompson, I'm going to ask you  
3 the same thing.

4 MR. THOMPSON: Thank you.

5 THE CHAIRMAN: In other words, what I want to  
6 accomplish is the picking of your brains for the benefit  
7 of all of us, while we've got you here.

8 MR. RATCHFORD: I think, looking down these  
9 questions pretty much in order, this first one is a  
10 question we have already mentioned. Baltimore City, I  
11 think, should not be singled out for special treatment  
12 because it is no longer a special category. Other units  
13 have grown in size to be able to share its problems.  
14 Exactly how you do this, I think, is still to be decided,  
15 but I believe it makes sense, in my own feeling, to con-  
16 sider the City as one of the twenty-four major subdivisions  
17 of the State, as it generally is in stated law and as much  
18 as possible continue it that way.

19 I have already spoken on the aspect of the  
20 small cities. In some ways, this is a problem area, I  
21 think. If you say abolish all cities under a thousand





1 people, you are going to abolish some cities that perform  
2 very essential governmental services in what are still  
3 predominantly rural areas of the State of Maryland and  
4 will continue to be so. I am talking about the far  
5 western part of the State and the Eastern Shore.

6 The question on mandatory home rule is a diffi-  
7 cult one. There will be obviously political opposition to  
8 it, perhaps from some of the smaller counties. Yet, when  
9 they gave it to the city, they gave it to all of them in  
10 one fell swoop, and I think it has worked reasonably  
11 satisfactory. In other words, what you are trying to do,  
12 you will never achieve to any great degree, the uniformity  
13 of the State, dealing with its political subdivisions un-  
14 less you give them all home rule at one time. As long as  
15 you continue to have ten with home rule and thirteen  
16 counties operating with another system, you are still  
17 going to come up with a continual hodgepodge of local  
18 exemptions, county exemptions and the like.

19 Also, I think the feeling in the small counties  
20 has changed with reapportionment. Today they are very  
21 gun-shy of loosing their senator and having all their



1 decisions made by somebody else, and if you talk about  
2 dictatorship, to the degree of legislators, if you have  
3 one delegate from a small county and that is it, this  
4 man has the absolute, complete and sole view of that com-  
5 munity and, if he still retains legislative control, we  
6 are in a worse system than we are now, where at least a  
7 senator can be handled by his delegates, if this did  
8 arise.

9 So, I am inclined to say, if we are going to  
10 have it, let's have it mandatory all the way down the line.

11 The metropolitan aspect; this, of course, is a  
12 very difficult question. I think as little detail should  
13 be in the Constitution as possible, because no one really  
14 knows what the evolution is going to be over the next  
15 twenty or thirty years. Yet, it seems to me, if you leave  
16 it voluntary, and any time you can get a great amount of  
17 large units to agree to something, you run into a problem.  
18 Basically, there should be a grouping with the metropoli-  
19 tan aspects, but with the Legislature being able to step  
20 in in certain instances. I don't know exactly how this  
21 would be worded, but you cannot go either voluntary or



1 mandatory. I think there is going to have to be some  
2 middle ground, preferably voluntary, but I don't think it  
3 would work out in the metropolitan areas.

4 As far as the other aspects, how you write your  
5 home rule provisions, I think again it would bear study  
6 after you have your analysis of what home rule is. I  
7 think if you prohibit the Legislature from doing every-  
8 thing, you can put your subdivisions too far away from the  
9 State. On the other hand, when you start to enumerate  
10 things, in constitutions, at least, you create great  
11 problems of inflexibility.

12 I don't really know the answer to that until  
13 I have studied it and until I have seen some of the legal  
14 analyses, and this I might suggest would be one important  
15 area to do some staff research in, this one on what is  
16 home rule.

17 The creation of new units of local government,  
18 I think again this is better perhaps left on the local  
19 level, but with the Legislature providing some general  
20 guidance. In other words, to say it can be done, the  
21 counties and cities can consolidate or consolidate





1 governmental units, permissive legislation would be  
2 needed by the Legislature, not in the Constitution, per-  
3 haps.

4           Resolving all city-county conflicts in favor  
5 of counties; I think I can answer that easily, yes, and  
6 my good friend Mr. Thompson might perhaps go the other  
7 way on it. I think here again we have to know what the  
8 conflicts are we are talking about. Certainly, there are  
9 many patterns of city-county areas of services where there  
10 are conflicts, but I think the more you provide the means  
11 of settling on a local level, the better off you are.  
12 You can never legislate cooperation, except by hitting  
13 somebody over the head, and I'm never really in favor of  
14 hitting people over the head unless I have to.

15           Whether to give local subdivisions complete  
16 financial authority; personally, I don't think this should  
17 be. I think one of the things that we have been for-  
18 tunate about in Maryland is that our Constitution does  
19 not stipulate many financial provisions in it, other than  
20 the State budget provision, the State bond issues; but,  
21 as far as tax limits, taxation, we have not been hampered



1 by the inflexibility. It has been up to the Legislature,  
2 I think by and large the Legislature has been responsible  
3 in this area. So, I would prefer to see the subdivisions  
4 still have to obtain authority for financial matters, such  
5 as levying of taxes, certain types of taxes, from the  
6 State Legislature.

7 I think it is bad to try to get this into a  
8 constitution. It provides inflexibility which we do not  
9 want. I think, on the other hand, subdivisions should  
10 have the right to issue their own bonds and not have to  
11 troop down to the Legislature to get authority every year;  
12 but, again, the Legislature may retain the authority to  
13 step in the counties and cities that went amuck and this  
14 is perhaps what they have under municipal home rule in  
15 one of the proposals in the code for home rule.

16 The last question; I don't know. Any time you  
17 have to treat all units of government, you have trouble  
18 getting "ripper" bills through the Legislature. Just  
19 generally, they are introduced on the instance of one or  
20 two members of the Legislature and they can be offset by  
21 other processes. If you are interested in this, I might





1 suggest again something New York has tried, where their  
2 "ripper" bills, in other words, stripping out the authority  
3 of local governments, must be passed in two consecutive  
4 sessions. In other words, it gets through the first  
5 session and doesn't take effect until the Legislature  
6 gets back and accomplishes it again. That's one way of  
7 doing it. They seemed pleased with it up in New York.

8 I don't know whether it has worked this well  
9 or not, but I am not really too concerned about "ripper"  
10 bills. Perhaps I am being a little naive here, but as  
11 long as you have to treat all the counties or cities as  
12 a group, I think you can stop the "ripper" bills in the  
13 Legislature, at least if the counties are willing to  
14 stand up as a group and, if they are not willing to stand  
15 up, perhaps they deserve to get ripped.

16 THE CHAIRMAN: Thank you very much, Mr.  
17 Ratchford. I might suggest to Dr. Loevy, since he is  
18 taking our minutes and is going to digest them with the  
19 aid of our missing reporter, that I contemplate asking  
20 when we finally get to the point where we have decided  
21 on our policy questions to be submitted, that there be a



1 comment made in explanation and to aid the digestion of  
2 each of the policy questions, similar to that which have  
3 been set up in the model constitution that we each have  
4 had a copy issued to us or distributed to us, and also  
5 that that comment be accomplished early enough, so that  
6 distribution can be made to each of the members of the  
7 Committee, inviting further comment and so stated absent  
8 comment or agreement which is more or less given -- let  
9 me see how I can express it -- consensus of feeling in  
10 the direction of the comment, in the direction which we  
11 more or less seem to be guiding the Commission as a whole,  
12 namely an expression of the position of our Committee,  
13 in aid of the Commission as a whole, similar to that which  
14 I think Mr. Ratchford has just done.

15 He has gone on record giving us his position,  
16 in some respects, which is exactly why we have asked him  
17 to be here, to have the benefit of that. My thinking is  
18 that as we agree upon the policy questions, we make the  
19 comment and then we come up with a direction or an indi-  
20 cation of the direction of our thinking.

21 Now, so that I don't catch Dr. Burdett entirely



1 by surprise; Doctor, when Mr. Thompson gets through, I am  
2 going to ask you to give us the benefit of your thoughts  
3 insofar as either rephrasing or additional policy ques-  
4 tions to be included in our submitting to the Commission  
5 as a whole, similar to the question I was touching upon  
6 when I talked to you on the phone the other day. Mr.  
7 Thompson?

8 MR. THOMPSON: Thank you, Mr. Chairman. I  
9 particularly appreciate the wording of the question as  
10 you put it to Mr. Ratchford, my colleague, and I assume  
11 that question, as you said, has been put to me, because  
12 it really is a matter of reaction in view of the fact I  
13 have not had a great deal of time to carefully review  
14 and to digest the proposed policy questions which you have  
15 here.

16 I would think that the activity of the Commit-  
17 tee as a whole would be guided by the thought which I  
18 think you expressed, perhaps not exactly this way, that  
19 really what we are out to do is provide a basis for the  
20 ideal local government in the State of Maryland and if  
21 that question is a background question, is an underlying





1 question which is kept in mind, I would think the results  
2 of this Committee's activities are just bound to be pro-  
3 fitable and valuable to this State.

4 With respect to the first question, what  
5 political subdivisions should be used, and more particu-  
6 larly to subquestion A, with respect to Baltimore City,  
7 I think I would simply refer to a comment I made a little  
8 earlier, that I think whatever classification or categori-  
9 zation is established for local government in the State  
10 of Maryland, perhaps municipalities as separate from  
11 counties, if you do indeed make that dichotomy or main-  
12 tain it in the future, Baltimore City should be a part of  
13 it, fit into it harmoniously somewhere.

14 Now, with respect to subquestion B, the aboli-  
15 tion of small cities in particular; I would think again  
16 the comments made earlier by Mr. Ratchford, in particular,  
17 and others and myself that the size of the cities is  
18 perhaps not the guidepost and I think more specifically  
19 the guidepost is services and really again to refer back  
20 to the general ideal as to which level of local govern-  
21 ment and what kind of government can do the best job for



1 the citizens in the area. I would have to say I cannot  
2 agree with a geographical area, because I think a geo-  
3 graphical area reference is very much bounded in time  
4 and, as things develop, indeed changes may occur and it  
5 may be a while, indeed, as Mr. Ratchford has indicated,  
6 before Western Maryland may be highly urbanized. Never-  
7 theless, I think that a guide along the lines of the  
8 services rendered or functions rendered by the cities or  
9 carried out by the cities would be better than the size  
10 of the cities.

11 I would think, however, that special districts  
12 that have been created for very particular services might  
13 well be abolished and that the services now rendered by  
14 those special districts be services rendered by whatever  
15 forms of local governments this Committee ultimately  
16 recommends be created in the State of Maryland.

17 I would say with respect to question 2,  
18 particularly A, whether mandatory home rule would be tied  
19 to a population figure; I would simply say, although I  
20 don't pretend any expertise or even a great knowledge in  
21 the area of county government, once again I would think





1 population is not the guidepost.

2           Going on now to question 3, whether a metro-  
3 politan form of government should be mandatory or volun-  
4 tary; I think that is perhaps the question to be put to  
5 the Committee and that is, after all, what you are seeking  
6 to determine here. Are these the questions that should  
7 be put, I would think that is a proper question. I would  
8 think whatever the Committee comes up with, if it is  
9 broad enough to permit development, then indeed you have  
10 done your job in that respect.

11           Now, as to question 4, whether to include a  
12 provision barring the Legislature from passing specific  
13 legislation for particular cities; I would be inclined  
14 to think that home rule as broad as possible would be  
15 best, and I suppose this ties in somewhat with your policy  
16 question 9 here, whether home rule powers should be  
17 enumerated in the Constitution.

18           I would think that if you delineate the areas  
19 of service as between local governments and the State,  
20 then you won't have much difficulty in giving complete  
21 home rule with respect to those services that are assigned



1 to the cities or counties. You may then effectively, of  
2 course, be limiting home rule, but nonetheless, if you  
3 give complete home rule authority within the activities  
4 designated for local governments, I would think you may  
5 be able to approach the problem satisfactorily that way.

6 With respect to question 5, whether to include  
7 a provision establishing general legislation in terms of  
8 city sizes, county sizes, or whether to leave this prob-  
9 lem to the Legislature; I think once again this is tied  
10 into an earlier comment, and really an earlier question,  
11 and I just don't think that size is the measure that  
12 should be used.

13 Question 6, whether to provide for the creation  
14 of new units of local government; the point was made  
15 earlier that this is indeed a basic, fundamental question  
16 as to whether the Constitution should contain the right  
17 or, in my terms, provide for the right of the people to  
18 create new units, and I would say I think it should. I  
19 think the people should be guaranteed the right to create  
20 new units of local government.

21 I realize that it is a fundamental question



1 and a problem and I think the question is well put and  
2 certainly is one that should be answered.

3 Number seven, whether to provide for resolving  
4 all city-county conflicts in favor of anybody, I would  
5 say no. I think that one should attempt to resolve con-  
6 flicts in favor of those persons who are served by the  
7 government; that is to say, the citizens of the local  
8 government, and it might very well be that in a particular  
9 area the conflict should be resolved one way, in one ques-  
10 tion, or one area of conflict, and in a different way in  
11 a different area of conflict. I guess I didn't answer  
12 that question as precisely as Mr. Ratchford. Nonetheless,  
13 I attempted to answer it with some similarity to his pre-  
14 diction.

15 Question No. 8, whether to give local sub-  
16 divisions complete financial authority; I believe there  
17 should be fairly broad authority given to subdivisions.  
18 This again relates, and I think so many of these questions  
19 are interrelated, and I commend those persons who pre-  
20 pared this list because I know it is very difficult to  
21 isolate these issues because, after all, they are related.





1 I think again this relates to home rule. How  
2 much authority does the local government or unit have, and  
3 it simply relates to an aspect of home rule, namely in the  
4 area of finance.

5 Now, there has been some talk, particularly  
6 of late, about the current urgency of the subject of a  
7 new tax structure or form for the State of Maryland. The  
8 now very well known Cooper-Hughes plan, which is very  
9 much talked about, there has been some talk about being  
10 able to levy income tax. Now, I am informed by some  
11 persons who have been active in the Cooper Commission  
12 study that there are some persons who believe that  
13 theoretically this is sound, to give this income tax  
14 authority to the local government.

15 I think it is a good question, properly phrased,  
16 and one that should be put to the Committee, and I think  
17 the authority should be quite broad. Now, whether it  
18 should be so broad as to leave the State without any con-  
19 trol at all, I think I am not prepared to answer at this  
20 time. I think I really have said what I can say about  
21 question 9 already, with respect to home rule powers.



1 I do think that home rule should be broad with respect to  
2 any local government and I would like to say again that I  
3 am most grateful to you and to your Committee for per-  
4 mitting me to be with you today and I certainly would be  
5 willing to assist in any way possible at any time in the  
6 future.

7 THE CHAIRMAN: Thank you very much. Dr. Loevy?

8 DR. LOEVY: Could I just ask you one question  
9 before you go, for a point of information?

10 MR. THOMPSON: Yes, sir.

11 DR. LOEVY: There has been some talk in the  
12 Committee of eliminating all cities and making Baltimore  
13 County a home rule county; in other words, having just  
14 twenty-four units of local government, twenty-three  
15 counties and Baltimore City as a county. As a principal  
16 spokesman for the municipalities in Maryland, what do you  
17 think of this idea?

18 MR. THOMPSON: I would think that it would be  
19 quite unlikely that a satisfactory solution to the prob-  
20 lems of local government in the State of Maryland would  
21 be found in any such highly simplified proposal. I think





1 that the problems are complex. I think, as Mr. Ratchford  
2 pointed out before, that perhaps some of the less popu-  
3 lated towns in the State of Maryland render the greatest  
4 service to the citizens.

5 I think it is true, and I know it is true,  
6 indeed, that it is the purpose of this Committee to pro-  
7 vide the best possible framework within the Constitution  
8 for the development of the best possible local government  
9 in the State of Maryland; that they would have to reject  
10 out of hand a proposal that would eliminate those existing  
11 local governmental units which now, perhaps by agreement,  
12 have many, and even those representing counties, and I  
13 don't by that mean to quote Mr. Ratchford, serving the  
14 people of the State of Maryland in their particular area  
15 so well. Does that answer your question, Dr. Loevy?

16 DR. LOEVY: Just let me ask you one more thing.  
17 Do you think creating all home rule counties would change  
18 your attitude toward this implication that you would make  
19 the county governments take over the city functions and  
20 carry them off?

21 MR. THOMPSON: No, I don't think so. I think



1 there's a question of representative government involved  
2 here. I think that the most responsive government some-  
3 times, in fact, always, I would say, is the government  
4 that is closest to the people and I would think the larger  
5 the government gets, the more difficult it is for the  
6 individual citizen to achieve representation of his  
7 interests and his rights before the organization and,  
8 therefore, although I have spoken heretofore this after-  
9 noon, with the kind permission of the Chairman and the  
10 other members of the Committee, to the effect that function  
11 rather than size is a principal factor for determining  
12 area of government with respect to abolition of municipi-  
13 palities, I would think that ultimately a maximum size  
14 perhaps would have some value.

15 It seems to me that there reaches a point where  
16 perhaps several of Mr. Parkinson's laws begin to apply  
17 with respect to the size of the government, and I think  
18 it might be difficult to provide responsible government  
19 if the government just grew immeasurably in size within  
20 the State of Maryland or, for that matter, within any  
21 other state.



1 THE CHAIRMAN: Does anyone else have any ques-  
2 tions? I am going to hold up excusing you for a few more  
3 minutes, Mr. Thompson, to call on Dr. Burdett to give us  
4 his reaction to the policy questions as stated and any  
5 amendments or additions. Doctor?

6 DR. BURDETT: As you know, I am leaving with  
7 Mr. Thompson, but I will be brief. First, if I could make  
8 a general observation about this very good list of ques-  
9 tions, I should think that there ought to be here some  
10 way that the Commission could deal with and some way that  
11 the Committee focuses for the Commission the problem of  
12 where State authority is in this total picture.

13 Now, the questions really deal with home rule,  
14 but they don't deal with another trend which is going on  
15 in our State along with home rule, that there are many  
16 functions which are becoming State functions. For example,  
17 there is nothing here which faces up to the kind of prob-  
18 lem which is realistic in our State now, that the State  
19 is in actuality a partial partner, not a full partner,  
20 but a partial partner in such things as, and it's in  
21 varying degrees, health, assessments, law enforcement.





1 We don't deal with these problems, you see, in terms of  
2 administration either at the county level or the municipi-  
3 pal level and, as we are presently constructed, the prob-  
4 lem looms larger at the county level than the municipal  
5 level.

6 Anybody reading this would seem to think or  
7 believe we haven't thought of the question does the trend,  
8 which we see in the Cooper-Hughes Report, that the whole  
9 State may get together and set standards, we don't seem  
10 to have this reflected here because if we had as much  
11 home rule as this would seem to show, we wouldn't have  
12 any Statewide standards unless we are going to amend the  
13 Constitution. So, I would think some reflection of that  
14 trend might be here.

15 Then, in terms of specifics; this question No.  
16 1, which has no alternative in it for retaining cities.  
17 If you will notice, B and C both speak of some abolition.  
18 There is very much more home rule for counties underlying  
19 the thinking here than there is the existing constitu-  
20 tional home rule for cities. I am not trying to take the  
21 position as to which should be the answer, but I think if



1 one is going to make choices and alternatives, he has to  
2 face these alternatives and the questions do not quite  
3 bring out the other alternative, that we would have en-  
4 larged home rule for municipalities. Understand, I am  
5 not trying to answer it. I am saying somebody is going  
6 to have to consider that one.

7 As a purely mechanical matter, question 3  
8 really already has two parts and I should suggest that it  
9 would help a little if they were given as two parts be-  
10 cause, after the semicolon, we are really dealing with  
11 part B, but there are some other angles involved. There  
12 are other alternatives that can be developed between  
13 federalism on the one hand and local popular referendum  
14 on the other. I haven't thought out the arrangements, but  
15 we could easily think of some dovetailing and some other  
16 structural arrangements which are choices to be given, and  
17 I understand it is one of our functions of the Committee  
18 to ask the Commission should we perhaps have several  
19 alternatives in some instances written in the draft which  
20 the Commission will ultimately suggest, with some possible  
21 justification as well as recognition of the limitations of





1 the various alternatives; so that an ultimate Consti-  
2 tution Commission would deal with the problem.

3 We are going to turn here to question 5. It  
4 seems to me that there are other alternatives in that  
5 also, that is, whether to include a provision establish-  
6 ing general legislation in terms of city sizes and county  
7 sizes, on the one hand, or whether to leave this problem  
8 for the Legislature. That does not exhaust the possi-  
9 bilities at all.

10 There could be, with respect to the second one,  
11 some guidance for the Legislature. My own philosophy  
12 really runs along the idea of a broad Constitution which  
13 permits a very good deal of flexibility, but has in it a  
14 minimum of inflexibility. So, if someone says, a new  
15 development turned up in the space age, let us work that  
16 out within the institutions of the State, would be my  
17 philosophy, rather than saying we must amend the Con-  
18 stitution because we didn't think of that. That is why  
19 I think a broad Constitution would be appropriate, with-  
20 out getting to relative inflexibility.

21 You see, question 5 presents some inflexibility.



1 The inflexibility, on the one hand, of specifying we are  
2 going to provide something, which is inflexible, or if we  
3 are going to leave the problem to the Legislature. Maybe  
4 that is less inflexible, but still has some inflexibilities  
5 in it.

6 I am making a speech perhaps for broadening  
7 the alternatives throughout. In number seven, I should  
8 think that whatever is done, something should be done to  
9 keep the unfortunate implication out, that I am sure was  
10 not meant here, if you get in an argument, the counties  
11 are always right. I would suggest that be rephrased  
12 some way. Even if you are going to say that in a home  
13 rule situation, the counties are going to determine on  
14 a countywide vote, that still doesn't mean it is in favor  
15 of the counties. It could mean it is in favor of the  
16 people of the municipalities because that is what they  
17 want and they are citizens, too. We need to get away  
18 from the dichotomy that the people of Prince Georges  
19 are all municipal or all county. They aren't. In all  
20 cases, they are county residents and municipal residents,  
21 both. It is quite possible to have a dual allegiance,



1 and this doesn't quite recognize it.

2 Now, in number eight, I think the problem which  
3 we talked about doesn't quite emphasize the word complete  
4 enough. I think that should perhaps might be modified  
5 or at least it needs an alternative, and the alternative  
6 we are talking about is extensive because there are many  
7 alternatives. If you're going to say the answer here is  
8 yes or no, then your no is they do not have complete, but  
9 what do they have? None? Well, I don't think we mean  
10 that. It ought to be spelled out a little bit to indi-  
11 cate the degree of extensiveness.

12 In nine, I think the problem word is enumerate.  
13 I don't think the problem is with the word ripper. I  
14 think it is enumerated. We have to face with the Com-  
15 mission the question of whether enumeration is a limita-  
16 tion or whether we can find such broad language where we  
17 could leave flexibility and still set some standards, with-  
18 out trying to enumerate it. I don't know the answer to  
19 that, either.

20 That is really all I have to say.

21 THE CHAIRMAN: Thank you very much, Dr.





1 Burdett. I think the comments are well made and I think  
2 they will be helpful.

3 Actually, I want to give at least a minute or  
4 so, Ridge, to ask you for your comments on the policy  
5 questions as submitted.

6 MR. MELVIN: Let me ask you a question, first,  
7 Hal. Is it contemplated that these questions we agree  
8 upon, unless we amend them, for example, that these  
9 specific questions will be presented to the full Com-  
10 mission?

11 THE CHAIRMAN: Yes. These questions, what I  
12 plan to do is really take advantage of the comments that  
13 have been made and the comments which our reporter and  
14 regular consultant and our executive director and I may  
15 have to add to them, and the suggestions which Dr. Burdett  
16 has made which I think are well taken, as we digest them,  
17 amend and enlarge the questions that we may have. We are  
18 between now and our next meeting going to come up with a  
19 final draft of policy questions which I hope to have dis-  
20 tributed to you at least a week before that next meeting.  
21 At the meeting, if there are any changes that would be



1       necessitated, we may not be able to meet our target date,  
2       but when I distribute the questions I am going to ask for  
3       immediate comment. I am going to try to get that comment  
4       put together or the changes before the meeting. I plan  
5       to have them approved at the meeting and then turned into  
6       the Commission.

7               MR. MELVIN: The reason I asked the question,  
8       I am wondering if we are in a position to make our own  
9       recommendations on many of these until we have gotten the  
10      benefit of these researches that we were talking about  
11      earlier.

12             THE CHAIRMAN: I don't think we are, but I  
13      think we can kind of give an indication of our thinking  
14      and that is why I carefully phrased, without being the  
15      position of the Committee, it will indicate the line of  
16      thinking of the Committee.

17             MR. MELVIN: Is the full Commission supposed  
18      to make a decision of its own?

19             THE CHAIRMAN: Then the full Commission is  
20      going to have to wrestle with these problems the way it  
21      sees fit. All I could say is we have been asked to give





1       them questions which we've got to wrestle with, which we  
2       regard to be policy questions. Now, what Mr. Eney as  
3       Chairman does with them after he gets them, I'm going to  
4       leave up to him because that I feel is a little bit be-  
5       yond where I can answer the question.

6               I do feel that we have made some progress in  
7       the direction of crystallization of issues. With the  
8       suggestion that Dr. Burdett has made, I think we further  
9       accomplished that purpose. I think what really is going  
10      to happen and, to be constructive in answer to the ques-  
11      tion, the Commission is going to be confronted with these  
12      things. It is going to have an appreciation of our prob-  
13      lem and then it is going to dump it right back into our  
14      laps to solve it. And where it is a matter of alternatives,  
15      they are going to ask us to suggest to them the alterna-  
16      tives. So, we are back on the road to resolving the  
17      problem.

18             MR. MELVIN: That's what I was wondering. As  
19      I understood Mr. Eney, it is not mandatory that we present  
20      these problems to him unless we have made up our minds  
21      as to what we are going to recommend with respect to the



1 various alternatives with regard to policy. I frankly  
2 don't see any point in submitting all these questions to  
3 the Commission unless we have made up our minds on them  
4 first or at least made up our minds.

5 THE CHAIRMAN: Ridge, I would agree with that,  
6 except I feel it might be helpful to us to get some idea  
7 of the thinking of the Commission before we make up our  
8 minds; in other words, to see that the dog and its tail  
9 get attached. We've got to get some thinking of the  
10 Commission or we're going to be out in the cold somewhere,  
11 if we don't do it. So, my thinking is, actually, if I  
12 may -- make your comments, please, Mr. Thompson.

13 MR. THOMPSON: Mr. Chairman, I would just like  
14 to make this brief comment and that is that although I  
15 realize it applies to a narrow and particular area of  
16 government, nevertheless, I think it is such an important  
17 problem that you really ought to give some thought to it  
18 and that is one of the greatest inequities in local  
19 government today is thought by most of us in the municipi-  
20 pal government is the problem of double taxation, that  
21 citizens of municipalities pay the taxes of the



1 municipality and the taxes of the county; and you referred  
2 yourself, I think for other reasons, to the town of  
3 Takoma Park in your discussion.

4 I have repeatedly heard officials of that town  
5 point out that the tax rate of their town, when added to  
6 the tax rate of the county, exceeds that of the city of  
7 Baltimore, generally regarded to have the highest tax  
8 rate in the State. I realize you are studying forms of  
9 government, but somehow, some way, this great problem  
10 might perhaps be considered. I am grateful to you for  
11 permitting me to add that addendum to my opinion.

12 THE CHAIRMAN: Mr. Ratchford, I would like to  
13 give you the same opportunity. Do you have any further  
14 comment you would like to make?

15 MR. RATCHFORD: No, I don't think so, Mr.  
16 Clagett. It's been analyzed very well. I'm afraid we  
17 cut Mr. Melvin off.

18 THE CHAIRMAN: The limitations of time, and  
19 really out of consideration for the time of each of you,  
20 it is now according to my watch 4:27. I would like to  
21 take advantage of your presence and continue further, but





1 I feel that we've got to more or less have a consideration  
2 of the time of each individual.

3 So, Ridge, what I was going to say by way of  
4 conclusion is that as a time schedule, the next meeting  
5 of this Committee will be at 10 o'clock a.m. on February  
6 21, prior to the meeting of the full Commission at 1  
7 o'clock on that date. Now, that means that we've got  
8 approximately three weeks between now and then. I plan  
9 to set up this kind of a schedule.

10 The minutes of this meeting will be distributed  
11 on or before ten days from today. That means within those  
12 minutes there will be an invitation for further comment,  
13 revision and change, and that that be back in my hands  
14 five days from that date. Then on the strength of those  
15 results, we will be prepared at the meeting on the 21st  
16 with a final draft of policy questions to be submitted to  
17 the full Commission. I plan to send a copy of that final  
18 draft and have it in the hands of John Brooks and Mr.  
19 Eney seven days prior to the actual meeting. That means,  
20 actually, we will have to do it overnight because, on the  
21 basis of ten days to get the minutes, five days for



1 comment, it will run very close to the 14th, then it will  
2 be working overnight to give a copy of that redraft seven  
3 days before, so that if the Chairman wants to act on any  
4 matter, he can move within a very short period of time  
5 and can include some items on the agenda.

6 DR. BURDETT: You want it brought up at the  
7 February meeting of the Commission?

8 THE CHAIRMAN: I don't, but I thought of having  
9 it in his hands.

10 DR. BURDETT: Well, you have to get it in his  
11 hands in at least eight days before the meeting of the  
12 Commission, so he can get it in the hands of the members  
13 of the Commission in seven days.

14 THE CHAIRMAN: Right. We will have to work  
15 back and we will have to take the 21st and come back  
16 eight days to at least give him one day and we may have  
17 to cut the ten days down a little bit, Dr. Loevy, in  
18 order to at least work it out within that framework; but  
19 I propose really to have in his hands our list of ques-  
20 tions even though we may change them at that meeting.  
21 So that, if he wants to act on it, he can do so in





1       whatever way he sees fit.

2               MR. BROOKS: I wanted to make a comment about  
3 the questions also. Insofar as we pose questions, we want  
4 to furnish material on which the Commission can base some  
5 judgment, unless it is so clearly a policy question, in  
6 the nature of local conditions, and they are within the  
7 knowledge of all Commission members and they don't need  
8 any supportive information, and in that regard we are not  
9 in a position to ask questions quite yet. Secondly, I  
10 think we want to probably present two or three policy  
11 questions rather than a list of questions and, if the  
12 Committee can give a recommendation, so much the better,  
13 but what I was thinking of particularly, we have nine  
14 questions listed here, the first four of which perhaps  
15 can be boiled down into two primary policy questions  
16 and the last five are probably more in the nature of  
17 decisions to be made by the Committee, not necessarily  
18 presented to the Commission at all.

19               I am thinking perhaps in terms of the second  
20 and third questions. It presents some rather clear-cut  
21 policy questions that, other than the experience of other



1 jurisdiction, it is really just a matter of the Com-  
2 mission reflecting its own desire on and whether they  
3 make a final determination of these questions, the  
4 Commission at the meeting, it won't be as important to  
5 indicate what direction the Committee is moving in.

6 THE CHAIRMAN: I think that is very important  
7 and actually we will use that as a guide insofar as try-  
8 ing to accomplish this schedule. We may boil it down to  
9 that.

10 Now, Ridge, you started all this by asking a  
11 question.

12 MR. MELVIN: I think John Brooks has stated  
13 my feeling much better than I tried to do, because as I  
14 look at these questions I see only two broad policy ques-  
15 tions that we are in a position to present to the full  
16 Commission, the first one being what political subdivisions  
17 should be used and under what unit of local government,  
18 and the second question of home rule, whether or not it  
19 should be mandatory; and on both of them, particularly the  
20 one on home rule, it seems to me we should submit with  
21 the question supporting data, studies and so on with our



1 recommendations.

2 Now, if we just want to submit these questions  
3 to the Commission with the idea that we have not yet made  
4 up our minds, but this is the direction that we are think-  
5 ing, that is one thing, but I don't think we are supposed  
6 to ask them what to do until we have made up our minds or  
7 at least have some idea what we think should be the answer  
8 to them. Do you?

9 THE CHAIRMAN: I think you are really hitting  
10 at the heart of the problem. Our responsibility and  
11 really this whole question of local government has so  
12 many questions that are tied one into the other that how  
13 you differentiate and separate becomes really quite diffi-  
14 cult. Once you have an objective, then you start going  
15 ahead and implementing that objective. I agree, that  
16 actually right at this stage we've got really two issues  
17 that we have apparently made up our minds on and that is  
18 what political subdivisions and whether home rule should  
19 be mandatory.

20 We haven't, however, got the detailed study to  
21 back up those issues as reflected in the very questions





1 that we have prepared here and the study research that is  
2 necessary. It would be some time, unfortunately, before  
3 that could be accomplished and we would be in a position  
4 to do what you are suggesting. Because of that, I think  
5 we've got to compromise a little bit and we've got to  
6 go ahead and submit the questions as I proposed and then  
7 if Mr. Eney comes back and says, well, now, having looked  
8 over these questions, there are certain matters here  
9 which I think we are ready to go ahead and submit to the  
10 Commission as a whole, then he may give us some direction  
11 as to what he wants us to go ahead and do, similar to  
12 what John has just outlined here.

13 However, I am going to leave that a little bit  
14 up to him, rather than my undertaking to decide it or,  
15 really, further debate on it. I feel it is necessary to  
16 keep driving in order to get anywhere or we can very  
17 easily get ourselves bogged down in the mass of factors  
18 to be considered and I want to avoid that by keeping  
19 moving rapidly enough so we don't get bogged down.

20 So, although frankly I might agree personally  
21 with what you are suggesting here, I am still going to



1 more or less try to go along the line of crystallizing  
2 the questions, getting them into the hands of the  
3 Chairman and the Executive Director and then letting him  
4 exercise his influence in the direction that he wants  
5 information by further direction to us. In the mean-  
6 time, however, I propose to keep us moving along the line  
7 of education, familiarity and decision which ultimately  
8 is going to have to be our responsibility.

9 Now, if he comes back and says he wants us to  
10 submit one of these policy questions, then the one I  
11 would submit would be that one or two that we touched upon,  
12 because I think they hit on the direction and the other  
13 things are the implementation in that direction and that  
14 is why, actually, the first item on the agenda at the  
15 first meeting was basically these two questions. However,  
16 I don't want to slacken up forward movement by reason of  
17 the job that has to be done here.

18 MR. BROOKS: And, Mr. Chairman, I think this  
19 list that has been prepared is very valuable to the  
20 Committee itself in resolving these questions.

21 THE CHAIRMAN: Yes.





1 MR. MELVIN: I think so, too. I think these  
2 are very valuable to the Commission at this point. I am  
3 not prepared to answer them right now.

4 THE CHAIRMAN: I don't think anybody is really  
5 prepared to answer them right now and that again is re-  
6 flected in the research questions that we have asked for  
7 and the value of that information once it is obtained,  
8 because it is going to be a matter of aiding. I think  
9 the help that we've gotten insofar as Mr. Ratchford and  
10 Mr. Thompson is concerned helps us along the line of  
11 eventually making these decisions which eventually we are  
12 going to have to make. However, again, I do feel, Ridge,  
13 it is important to us to keep the thinking of the Com-  
14 mission as a whole, the tenor of the thinking of the  
15 Commission, if for no other reason, that we get on stage  
16 for a little while and get the reasons from somebody here,  
17 somebody there, and somebody here.

18 There are other valuable members on the Com-  
19 mittee, such as Mr. Thayer. His thinking and reaction to  
20 a lot of these questions would be important. He really to  
21 some extent is an expert in this field of local



1 government, from the work he has done on it. I think,  
2 true, we might not be able to get them into a Committee  
3 meeting, whereas they would be available if we'd get  
4 these matters before the Commission as a whole.

5 MR. BROOKS: It serves a dual purpose. You  
6 let the Commission know where we are going and get their  
7 reaction. At the same time, I don't think you will get  
8 the Commission taking a vote or any action on this at the  
9 next meeting. Even at the next meeting, I think they  
10 will be unable to handle the matter, even if a formal  
11 question is posed.

12 THE CHAIRMAN: And they will be bouncing it  
13 back to us.

14 MR. BROOKS: And I don't think, if they should  
15 make a decision, it would be any more than a tentative  
16 decision such as has been made on the convention pro-  
17 cedure reports.

18 MR. MELVIN: John, do you feel then we should  
19 submit these detailed questions just like this to the  
20 Commission?

21 MR. BROOKS: I think we will boil down the



1 substance of the first two questions that could be asked  
2 to the Commission and perhaps indicate to them the trend  
3 of thought of the Committee, to see if there are any  
4 comments they wish to make on them and not necessarily  
5 push, that they have to make any decision, but perhaps  
6 there will be some comments from the Commission that would  
7 be of value to take note of. In a way, it will indicate  
8 the position of the various Commission members which might  
9 be helpful to the Committee in formulating its recommenda-  
10 tions.

11 THE CHAIRMAN: And then, too, don't forget  
12 that we've always got to keep prodding the material and  
13 the persons who are members of this Committee who haven't  
14 shown up at these meetings and, if we relaxed on the  
15 issues in any way, we would be limiting the scope of our  
16 consideration in a way that I don't think we can. So, I  
17 think we've got to keep on this course.

18 MR. BROOKS: Another thought would be to maybe  
19 also just circulate the general information, a list of  
20 questions such as this, just to indicate the magnitude of  
21 what the Committee is doing. In other words, not propose





1 all the questions, but maybe give the Commission an  
2 elaborate list of ten questions to indicate what is being  
3 contemplated by the Committee, just to make them aware of  
4 the scope.

5 THE CHAIRMAN: That really, I think, is another  
6 way of putting what I was contemplating insofar as our  
7 time schedule, and having there in front of them -- I  
8 don't want to undertake the responsibility of doing that.  
9 If the Chairman wants to do that, and I have given him  
10 this list, that may be the direction he takes. At the  
11 same time, he can send it back to us to do something  
12 further and more specific. He might even suggest we  
13 make a distribution of that list to show the scope of  
14 our inquiry here. I found, in my own experience, that  
15 actually, as I digest this thing more and more, it becomes  
16 more complicated. It becomes really more simple insofar  
17 as the problem is concerned, but the details become more  
18 difficult, to say you think this, as distinguished from  
19 what I think, because this and that suddenly run afoul of  
20 a third factor that you find you've got to resolve the  
21 inconsistency with. Then you go back and you start all



1 over again and eventually you get a point of view and,  
2 once you get a point of view, then I think you begin  
3 moving in a direction of resolving them without too much  
4 difficulty.

5 That then brings into focus the feasibility  
6 aspect of the thing, notwithstanding how nice it would be,  
7 is this something that is going to be acceptable? So that  
8 I think we've got to always keep aware of the fact that  
9 even though we might want to accomplish an article or  
10 write an article that is along the line of a model con-  
11 stitution, we nevertheless have got to consider whether  
12 or not that is going to be accepted. It is simple enough  
13 to write the article.

14 MR. MELVIN: Accepted by the people, you mean?

15 THE CHAIRMAN: Accepted by the convention. I  
16 think the people are going to accept what the convention  
17 comes up with. I think our job is really going to be with  
18 the convention. I think, if I have gauged the tenor  
19 accurately, the people are ready to revise the Constitu-  
20 tion, but it is going to depend upon the reaction of the  
21 convention itself. What way that is going to be done, it





1 is going to be done in some way, but what the scope and  
2 breadth of it is going to be is another matter.

3 I would like to call the attention of the  
4 Committee to comments which were forwarded to me by Mrs.  
5 Freedlander who was unable to be present at this meeting  
6 and, for the benefit of each of us and for our record, I  
7 would like to let those comments be made a matter of  
8 record.

9 Number one, Mrs. Freedlander has indicated that  
10 she favors mandatory home rule without a specific popu-  
11 lation figure. She has indicated that she prefers a  
12 three to five-year phase-out period allowing for readi-  
13 ness either on the part of a single county or several  
14 counties jointly.

15 She has further indicated that all efforts  
16 should be directed toward preparing local government for  
17 the ultimate decision. Professional assistance can be  
18 afforded by the State government either from a specificall-  
19 ly created new department or from existing departments  
20 such as Fiscal Research Bureau.

21 She has pointed out that closely allied to the



1 mandatory home rule policy question are Dr. Loevy's  
2 questions 3c and 4. Maryland can utilize the experience  
3 of the Metropolitan Federation of Toronto, Canada and  
4 Dade County, Florida. These two areas had to work out  
5 which functions would remain with the local units and  
6 which would be the province of the Federation.

7 She has indicated approval of questions 7 and  
8 8. By way of comment, she has indicated, A, we should  
9 recommend suitable statutes to implement such broad  
10 constitutional powers and allow the units all residual  
11 powers not denied by the Constitution or general laws;  
12 and, B, establish a department of urban affairs to assist  
13 the local units, similar to the bill awaiting Pennsylvania's  
14 Governor Scranton.

15 She points out that only four states to date  
16 have taken such action. They are New Jersey, New York,  
17 North Carolina and Pennsylvania.

18 New Jersey's assistance is limited to financial  
19 and tax matters. With the new Federal Department of Urban  
20 Affairs now functioning, perhaps more states will take  
21 this forward-looking step.



1 Her comment on a matter of policy in our  
2 efforts to reduce the number of governments and strengthen  
3 state-local relations, we should be careful not to allow  
4 a proliferation of single function special districts,  
5 characteristic of areas like New York and Chicago, where  
6 you find 1,000 governments of one type or another.

7 In Maryland as elsewhere, she goes on to say,  
8 there are numerous instances within the State of function-  
9 al cooperation transcending the city or an individual  
10 county. We should note the pamphlet published by the  
11 Maryland State Department of Health where we now observe  
12 a metropolitan attack being made on the question of air  
13 pollution. It is being jointly supported by written  
14 agreement between Anne Arundel County, Baltimore County,  
15 and Baltimore City. It was made possible in June 1965,  
16 by a first year grant of \$225,000 from the United States  
17 Public Health Service.

18 Under the existing agreement, this function  
19 will continue for three years.

20 She asks a question whether we could get  
21 information on the regional district government of Prince





1 Georges County study done by the American University in  
2 1954. Mr. Brooks, could we check into this further and  
3 find out what the content of this study is and whether  
4 copies of it would be available to us?

5 It is now nearly 5 o'clock, and I think that  
6 unless someone else has something --

7 MR. BROOKS: I have an item of business, Mr.  
8 Chairman.

9 THE CHAIRMAN: Go ahead.

10 MR. BROOKS: I suggested to you on the phone,  
11 and I think very briefly, that perhaps we might contem-  
12 plate a panel discussion for this Committee on the  
13 morning of the Commission meeting. I don't think we can  
14 have quite an elaborate panel discussion at that time as  
15 we might otherwise desire because of the time limitation,  
16 since we will be running into other committee meetings  
17 that day.

18 I was thinking in terms of perhaps having two  
19 persons there that morning to present points of views on  
20 municipal governments. We have several recommendations  
21 from the Advisory Committee on Intergovernmental Relations



1 of persons who could share with this Committee various  
2 points of view as to expectations and future growth. In  
3 particular, it was recommended that Professor Jim Pollack  
4 of the University of Michigan, who was also an assistant  
5 in the constitutional convention in Michigan, and he  
6 specializes in municipal government from an academic  
7 standpoint; and my thought was if we could bring him in  
8 to participate in any kind of panel, it might be also  
9 desirable to have him come at a time when he might talk  
10 to the whole Commission about his experience in the  
11 Michigan convention.

12 Another thought would be of the possibility,  
13 if it is a possibility, of planning a larger panel the  
14 succeeding day, on a Tuesday, instead of meeting on  
15 Monday.

16 THE CHAIRMAN: You mean meet Tuesday morning  
17 instead of Monday morning?

18 DR. LOEVY: That's the 22nd.

19 THE CHAIRMAN: George Washington's birthday.  
20 I would like to be able to hold to the Monday meeting.  
21 I think, actually, the demands on the time of Committee





1 members who are also members of other committees and the  
2 responsibilities they have there are such that we've got  
3 to more or less dovetail these things in. I am in agree-  
4 ment, however, with this panel thought and I would like  
5 to take advantage of it to put further pressure on all  
6 the other members of this Committee to be present at  
7 that meeting.

8 I think, too, if we do move from Monday to  
9 Tuesday, we may have a conflict with --

10 MR. BROOKS: I think it does create a lot of  
11 problems. I think it would facilitate using Mr. Pollack.  
12 On the other hand, we might limit that Monday meeting to  
13 merely a presentation of his thoughts on municipal govern-  
14 ment to this Committee and not have any other consultants  
15 at that time, not have a full-blown panel, but have a  
16 more detailed panel with other relatively closer persons  
17 that Professor Pollack could --

18 THE CHAIRMAN: And if we meet this schedule  
19 that I have already outlined here, we might make that  
20 information available to him, so we could get comment  
21 from him that is particularly applicable to our situation.



1           MR. BROOKS: I wanted to mention in terms of  
2 the transcript, I thought we would make it available to  
3 Dr. Loevy, from which he could extract the minutes and  
4 make it available to the people who are absent, in which  
5 case we could Xerox and perhaps have some copies to send  
6 out in the future, and I wanted to ask you if you thought  
7 it was desirable to make copies available to the Committee,  
8 including the persons present today. This transcript  
9 will have some editing. We won't attempt to reproduce  
10 it in any quantity and in any detail.

11           THE CHAIRMAN: I see no reason not to do that.  
12 I think it falls within the purpose of educating the  
13 individual members. As we go back over the transcript,  
14 it will also give us further thoughts of our own. I am  
15 sure it would be helpful to you, Dr. Loevy, in making up  
16 the minutes. I don't mean the transcript to be a sub-  
17 stitute for the minutes, but I think the minutes could  
18 more accurately reflect the proceedings.

19           All right, gentlemen, the meeting is adjourned.

20           (Whereupon, the meeting adjourned at 5 o'clock  
21 p.m.)

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1                                    CONSTITUTIONAL CONVENTION COMMISSION

2

3       Meeting of Committee on Legislative Department held on

4       Friday, February 4, 1966, at 11:30 o'clock a.m., at

5       Room C-311, University of Maryland, School of Law,

6       Baltimore, Maryland.

7       PRESENT:

8               Dr. Harry A. Bard, Chairman of the Committee

9               Dr. John H. Michener, Research Assistant to the

10              Committee

11              Dr. John P. Wheeler, Jr., Consultant to the Committee

12              Dr. Clinton I. Winslow, Consultant to the Committee

13              Dr. W. Brooke Graves, Consultant to the Committee

14              Mr. Delmar Kentner, Consultant to the Committee

15              Mr. Alexander Harvey, II, Reporter for the Committee

16              Mr. Alfred L. Scanlan,

17              Mr. Charles Della, and

18              Mr. Charles Mindel, Members of the Committee

19       ALSO PRESENT:

20              Mr. H. Vernon Eney, Chairman of the Commission

21              Mr. John C. Brooks, Executive Director of the

                Commission

                Mrs. Maurice Freedlander, Member of the Commission

22       Reported by:

23       A. Castiglione



1 THE CHAIRMAN: Setting this up as a proposal  
2 for the agenda, suppose we look at it before we start and  
3 see whether we are on the right track. We have the privi-  
4 lege today of having three consultants, four, actually,  
5 although Dr. Winslow really is a member of this Committee  
6 and I hope he will let us draft him. We want to take  
7 advantage of these people who might not be able to come  
8 to very many of our meetings.

9 We have Dr. Michener who, as you know, has  
10 already submitted to us a statement with respect to  
11 unicameralism vs. bicameralism, and we have Dr. Graves  
12 who most of us recognize as the outstanding authority in  
13 the field of government. Some, like myself, have grown  
14 up as a student reading his books and then as an instructor  
15 using them.

16 We have Mr. Kentner who is a Nebraskan of some  
17 long standing who will speak and we have been very fortu-  
18 nate to be able to get him.

19 We have Dr. Wheeler and Dr. Winslow who has  
20 been working primarily in this area of reapportionment  
21 which was given to him as an assignment. Most of the





1 others have been working on this unicameralism vs.  
2 bicameralism.

3 There will be an opportunity for deliberations  
4 and questions. Then we have this assignment that I think  
5 we had better get at. Mr. Eney, our honorable Chairman  
6 of the Commission, is here. We are supposed to give our  
7 own position on some questions for the Commission, since  
8 the Commission will be meeting next week for this purpose.  
9 Is that correct?

10 MR. ENEY: The 21st.

11 THE CHAIRMAN: We may not meet between now  
12 and then, I'm not sure. It may well be by the time we  
13 get down to here, we will feel we may need another meeting.  
14 We ought to be prepared to get some comments. Let us set  
15 some ground rules and we will try to do this fairly  
16 rapidly.

17 We could operate in one of two ways. Some of  
18 us have already indicated that we have to get away from  
19 here at 2 o'clock, or thereabouts. If we do that, and  
20 here it is about 11:30, now, shall we just operate clear  
21 through until, let's say 1 o'clock, and see what it is



1 like, and then maybe take a short break and bring some  
2 lunch up here, if you find it necessary? We can get it at  
3 the snack bar downstairs and bring it up.

4 Another way would be just to finish up all we  
5 have on this agenda that might be completed. Does anyone  
6 object to going until 1:00, and then taking stock at 1:00?  
7 Are there any suggestions you want to make in terms of the  
8 proposed agenda for today? If not, I want to thank these  
9 gentlemen again for being with us and, while we have listed  
10 them individually, they really are a panel.

11 I want to take this opportunity, too, to tell  
12 Mrs. Freedlander and anybody else who isn't on our particu-  
13 lar Committee how grateful we are that they have come to  
14 join us today.

15 We shall start, now, and I know you may want to  
16 take some notes of your own as we go along. I hope you  
17 have had the opportunity to at least glance through the  
18 very fine report by Mr. Michener. Keep in mind, as we  
19 hear these reports, that there are really two questions of  
20 great significance; the question of the material itself  
21 and, secondly, the question, are we going to propose to the



1 Commission in connection with unicameralism vs. bicameral-  
2 ism that it would be a good idea to have alternative  
3 possibilities which we would submit to the convention in  
4 our working papers and perhaps in the proposal itself.  
5 Not only with the nature of the presentation, but what  
6 shall be our views concerning what we do with it.

7 Dr. John H. Michener has already turned over to  
8 us a statement on the structure of the Maryland Legislature  
9 and we may want to go along through this and say to him  
10 take as much time as he feels that he would need to make  
11 this paper clear.

12 DR. MICHENER: We will start out with the  
13 statement that there are a number of claims and arguments  
14 in this paper pro and con, and these are largely based on  
15 assertions which are not documented by objective facts  
16 where they are attested to by documents. They basically  
17 rest on value judgment you have to either accept or reject,  
18 such as, is there a higher quality legislature that comes  
19 from a unicameralist system. That claim is made, for  
20 example, in Nebraska. This gets back to basically value  
21 judgment, of what is a higher quality of legislature.





1 You just have to decide whether you accept this.

2 The facts that compare Nebraska with other  
3 states just do not exist and separations as to how much  
4 this happens in Nebraska because of unicameralism, how  
5 much is due to nonpartisanship is again not clear. So,  
6 we have a series of claims here which you have to evaluate.

7 I just want to point out that these are not  
8 demonstrable in terms of what I would consider real solid  
9 studies.

10 The thing that I think is pertinent here, what  
11 I thought was quite helpful, at least to me, was that in  
12 terms of Maryland history, that Maryland first came to  
13 bicameralism as a vehicle for obtaining more popular  
14 participation in the government, not as a check on popular  
15 participation. The statement is often made that we picked  
16 up bicameralism as a check on the wishes of the masses,  
17 or both, and this just isn't true as far as Maryland is  
18 concerned; and I suspect it is not historically true as  
19 far as other colonies are concerned, but in Maryland we  
20 had the second chamber, the lower chamber, in order to  
21 have an independence from the Governor. The Governor



1 dominated the Legislature up until that time.

2 So, historically, bicameralism in this State  
3 was a means for popular expression, not a means of limiting  
4 that expression.

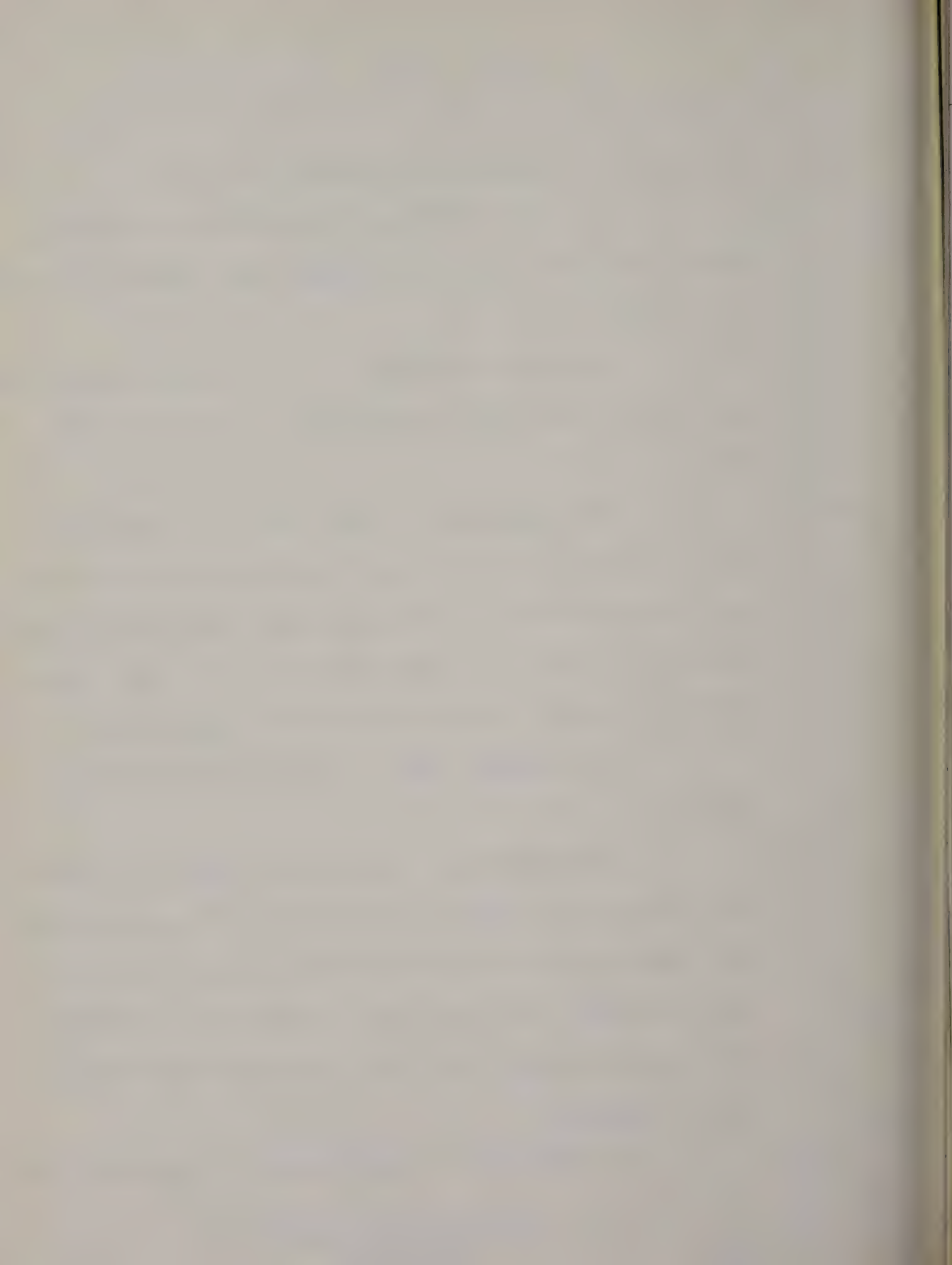
5 You have the paper. I don't know if there are  
6 questions. You said to go through it to see if it is  
7 clear?

8 THE CHAIRMAN: I think really, Dr. Michener,  
9 if these folks are in the same position I am in, and per-  
10 haps they may not be in this unfavorable position; we just  
11 received it a day or so ago because mail has been behind  
12 and, as a result, we have hardly had an opportunity --

13 MR. MINDEL: Yes. I just got it yesterday  
14 afternoon.

15 THE CHAIRMAN: I just got it yesterday after-  
16 noon because mail delivery has been bad all over the City  
17 and, therefore, it might not be a bad idea if we turn the  
18 pages with you and if you have us underscore certain key  
19 sentences and phrases or clauses, so they might more or  
20 less be imbedded.

21 DR. MICHENER: Historically, the arguments for





1 bicameralism -- we'll start off with the arguments for the  
2 retention of bicameralism.

3 THE CHAIRMAN: That is on Page 3.

4 DR. MICHENER: Yes, Page 3. The arguments have  
5 been that the upper house presents a vehicle for repre-  
6 sentation of other interests, for the property classes,  
7 and some of the material Mr. Brooks just sent out reflects  
8 this; that the early senators in the State of Maryland had  
9 to have 1,000 pounds and be property owners, so that they  
10 would be there to prevent the popular groups, the masses  
11 from overwhelming the Legislature.

12 MR. SCANLAN: Dr. Michener, has this argument  
13 seriously been advanced as a justification for bicameralism  
14 in 100 years?

15 DR. MICHENER: No, I don't think so, and as I  
16 say --

17 MR. SCANLAN: Woodrow Wilson in his book, The  
18 State, in 1896, pointed out that the bicameral justifica-  
19 tion was not based on principle, but expedience, tempering  
20 legislation. He has about just as good justification for  
21 it as I have ever seen, but this argument, number one,



1 seems to me to be a pure straw man --

2 DR. MICHENER: Straw man, in the sense that it  
3 is no longer valid.

4 MR. SCANLAN: It hasn't been valid for 150  
5 years.

6 DR. MICHENER: But it is not a straw man. The  
7 reason I mentioned it is that historically this is the  
8 argument that led to the strong arguments for bicameralism.

9 MR. SCANLAN: It would not be an argument for  
10 bicameralism today.

11 DR. MICHENER: What happened was the original  
12 arguments died and other arguments were substituted for  
13 them.

14 MR. SCANLAN: I want to make clear this is not  
15 an argument today that would justify it.

16 DR. MICHENER: I say the argument is no longer  
17 made today. As a matter of fact, the other argument which  
18 has been made up until very recently is that the two houses  
19 permit representation of two different interests or inter-  
20 ests in two different chambers and, of course, historically,  
21 this is the one that has been the strong argument in the



1 United States for bicameralism; that in the upper chambers  
2 we could have representation on a county basis, for example,  
3 a geographical basis. This, of course, is no longer a  
4 tenable argument at the present time.

5 Then we get to the other arguments, that a  
6 second chamber provides a check on popular passions,  
7 popular wishes. The term popular passions, or the word  
8 passion has a connotation of something undesirable.

9 There is the argument that a second chamber  
10 gives a thorough review to legislation. It is a revising  
11 chamber. You can look at it, prevent hastily and ill-  
12 advised legislation.

13 Skipping down some of these to the more impor-  
14 tant ones, an argument is made on lobbying and corruption;  
15 that with two chambers, it is harder for legislators to  
16 be reached either by a lobbyist or by someone trying to  
17 corrupt the Legislature. You have two opportunities to  
18 make sure the legislation is in good form.

19 The other argument made strongly for bicameral-  
20 ism is that this works, we've had experience with it,  
21 everyone understands it. There is no reason to throw it





1 over for something else unless the other alternative is  
2 clearly demonstrated to be superior; in other words, you  
3 have a system that should be continued.

4 Now, as I mentioned before, these claims are  
5 generally made. There is no documentation for them that  
6 I have found.

7 Now, the unicameralists make their attack on  
8 three grounds. First, they deny practically every claim  
9 that is made for bicameralism. They make a plea for their  
10 own system on its merits and then they try to refute  
11 criticisms levied against the unicameral system.

12 On the argument that bicameralism provides a  
13 check on popular wishes and popular passions, the argument  
14 here is made on a philosophical ground, that a legislature  
15 is set up to represent the wishes of the majority of the  
16 population and a check on that wish, just to have a check,  
17 is undesirable; that this is undemocratic and that a check,  
18 as such, is not something we should want. A check, if it  
19 is to be there, should be to protect the interests of  
20 someone in the society, some vested rights -- I won't say  
21 vested rights -- some interests and, if we want to provide



1 such a check, it is best secured through other consti-  
2 tutional provisions, not through a legislative check, as  
3 such. If you want to have checks on expropriations, you  
4 have these checks through the Governor's veto, by referen-  
5 dum; but to have a check in the legislature just to have  
6 a check in the legislature is not something defensible in  
7 theory.

8 MR. HARVEY: On that last paragraph, on Page 5,  
9 I think there is a misprint there, unicameralists instead  
10 of bicameralists.

11 DR. MICHENER: Yes. A more serious attack is  
12 made on what is now one of the prime defenses of bicameral-  
13 ism, that it gives an independent review of legislation.

14 The unicameralists assert first that this  
15 factually is not true, that in a bicameral legislature,  
16 as a matter of actual fact, legislation is introduced, it  
17 piles up at the end of the session and it is passed  
18 hastily, without any review; that one chamber will often  
19 pass legislation on the assumption that the second chamber  
20 will review it. Particularly with noncontroversial legis-  
21 lation, it is true, according to unicameralists, the





1 second chamber does not provide a check. The second  
2 chamber will investigate only controversial measures, so  
3 that the unicameralists say, as it works, bicameral  
4 legislatures just do not provide the claimed review.

5 They go on to state that the review that has  
6 been done has not been proved to be worth much, that when  
7 you look at the legislation that has been turned down by  
8 the second chamber, that usually this is not legislation  
9 that can be factually shown to have been really desirable;  
10 in other words, if it had been enacted, there would have  
11 been no serious loss to the State.

12 Another statement was made in connection with  
13 Nebraska is that the legislation enacted by the unicameral  
14 legislature was actually of higher quality than was enacted  
15 by previous legislatures, as attested by how many of the  
16 statutes were declared unconstitutional or how many of the  
17 statutes were found to have legislative bugs or jokers.  
18 So, the argument is the check you get from a bicameral  
19 legislature is not a worthwhile check.

20 MR. SCANLAN: But, even that argument, that  
21 counter to the argument might not stand up. Over the



1 years, the courts, not only the Federal courts, but State  
2 courts have shown a disinclination to overturn the acts of  
3 legislatures. There was a day, of course, when the courts,  
4 State and Federal, had no hesitancy about overturning a  
5 solemn act of a State legislature or the Congress; and I  
6 assume that Nebraska's experience was the same back in those  
7 days. I believe the unicameral legislature came in in  
8 about 1937.

9 DR. MICHENER: Yes.

10 MR. SCANLAN: And that was just about the time  
11 the tide turned and the philosophy of judicial self-  
12 restraint took over. Therefore, the statistics about  
13 whether a higher percentage of statutes were declared  
14 unconstitutional prior to 1937 than were after have no  
15 particular meaning for me. It doesn't prove the point  
16 for which it is asserted, I do not believe.

17 DR. MICHENER: I agree with you on that point,  
18 but again you are illustrating the thing I mentioned  
19 before, that the assertions are made and there are value  
20 judgments involved. There is no factual --

21 MR. SCANLAN: In other words, all these points



1 are debaters' points.

2 DR. MICHENER: They basically provide a differ-  
3 ent philosophy on the two different systems. In this case,  
4 your point is valid.

5 MRS. FREEDLANDER: Mr. Chairman, isn't it true  
6 that the unicameral legislation also was accompanied by  
7 reference to the legislative council, which might have  
8 improved the law with fewer loopholes?

9 DR. MICHENER: They came in simultaneously and  
10 the question is, and it has been argued, how much is due  
11 to unicameralism, as such, and how much is due to the  
12 legislative council. This is mentioned, by the way --

13 MRS. FREEDLANDER: Yes.

14 THE CHAIRMAN: And of a nonpartisan nature;  
15 that's another thing. It's very difficult to cancel it  
16 out. I think that is a point well taken.

17 DR. MICHENER: Then the other argument made  
18 against the second chamber is that there is no need for  
19 review. The argument for review dates back historically  
20 to when we didn't have legislative councils; that we have  
21 bills drafted by legislators and by the executive department





1 and they have a technical drafting before presented to  
2 the legislature, so that when the legislature works on it,  
3 this in itself is a second independent review and when you  
4 go to a second chamber of the legislature, the argument  
5 then is made that we have already had a review by the  
6 specialists in the area, we've already had a review by  
7 the people representing the interests of the populous,  
8 and we are now having the review by a group that is nor-  
9 mally neither technically professional in the area nor  
10 more representative of the population. So, they have  
11 nothing further to contribute. So, this is a third  
12 argument made by the unicameralists as to why a claimed  
13 second chamber review is not appropriate or necessary  
14 today.

15 There are some other points in here which are  
16 relatively minor. I will skip over them, unless --

17 THE CHAIRMAN: Read perhaps the opening sen-  
18 tence of these paragraphs so we have some familiarity with  
19 the minor points. This is Page 8, I think.

20 DR. MICHENER: This is Page 8. The statement  
21 that with a bicameral legislature -- and I turned the



1 words around here and this is actually what the man said --  
2 but with the bicameral legislature you can halt legisla-  
3 tion where there is tremendous pressure for it and where  
4 it would be impossible to defeat it outright; that it will  
5 go between two houses and you have a chance to get further  
6 consideration. The unicameralists say this is no argu-  
7 ment for bicameralism at all, that if legislation is un-  
8 desired and there is popular pressure for it, the proper  
9 role of the legislature is to educate the people as to  
10 why it is not desirable, not to kill it behind the scenes.

11 The other one here is an argument that you are  
12 going to have a dominant legislature that is going to take  
13 over the government and it is going to exert disproportion-  
14 ate power. This is an old historical argument. It is a  
15 fact that it has not proved this way and probably today  
16 it is strengthening the legislature, not breaking up its  
17 unity, so it cannot be on a level with the Governor. There  
18 is no danger today of any legislature overpowering the  
19 government.

20 The argument that is made quite often here and  
21 does have to be mentioned is the question of the lobby and





1 how the lobby has affected either of the two systems.

2 This argument is one that goes both ways. I may have it  
3 out of order here, but the argument for bicameralism is  
4 that with a legislature of two houses, you cannot corrupt  
5 two houses at the same time, or it is very unlikely. The  
6 unicameralists say this has happened; that is no argument.  
7 But, aside from corruption, a legislature under a bicameral  
8 system, you have to have the lobbyists reach both chambers.  
9 Aside from the issue of corruption, you have to reach both  
10 chambers to get your legislation through, so the bicameral  
11 system gives you two chances to stop the lobbyists.

12 The unicameralists say that may be true, but  
13 most of the legislation we want to produce is positive  
14 legislation which the lobbyists are opposed to. So, all  
15 they have to do is reach one person or one house and stop  
16 the legislation. This way, you can say the unicameral  
17 system gives only one chance to block legislation rather  
18 than two chances, and you reduce the power of the lobbyist.  
19 It depends here whether you are looking at the lobbyist  
20 as a proponent of legislation or opponent of legislation  
21 and, as to which way you go on this, you take your pick



1 as to what type of role you see for the lobbyist.

2 The other problem, of course, with the lobbyist  
3 is that with a unicameral legislature, the legislators are  
4 clearly responsible for what they do and the claim is made  
5 that with the publicity and the open procedures you get  
6 from a unicameral legislature, the lobbyist's role is  
7 exposed and so his role is thereby reduced. There again  
8 are assertions that have been made both ways. Some people  
9 look at it and say it is not just the way at the present  
10 time.

11 On Page 9, there is the reference to the fact  
12 that one of the arguments against unicameralism is that it  
13 is strange and it is unknown. It is pointed out that  
14 unicameral legislatures are very common in city governments.  
15 People are quite familiar with them. They are quite famil-  
16 iar with a comparable system in corporations, where you  
17 don't have a bicameral director at the top and that is no  
18 longer something that is strange to the American people.

19 THE CHAIRMAN: I might add that we are also  
20 familiar with the transition from a bicameral local legis-  
21 lative body to a unicameral. We in Baltimore changed in



1 1923, wasn't it, Mrs. Freedlander?

2 MRS. FREEDLANDER: I thought it was recent.

3 THE CHAIRMAN: Or somewhere in the early part  
4 of the 20's, relatively recently. So, a lot of us know  
5 about it.

6 DR. MICHENER: Now, after refuting the claims  
7 for bicameralism, the unicameralists make certain positive  
8 attacks on the bicameral system and the first of these and  
9 foremost among them is the conference committee which is  
10 heavily attacked. Every time you read some material pre-  
11 pared by unicameralists, they attack the conference com-  
12 mittee on the ground that the conference committee operates  
13 in secret. It is not accountable to the people and the  
14 populous as a whole cannot find out what happened in the  
15 committee, who has spoken for the particular direction by  
16 the conference committee, and that it is a secret legis-  
17 lature to the effect that you cannot hold anyone to account  
18 and that it permits the legislature to do all sorts of  
19 things they could not do if the legislature had to stand  
20 up and each member be counted for his position.

21 MR. ENEY: Dr. Michener, the conference committee





1 is very rarely used in Maryland. Is it extensively used  
2 in other states?

3 DR. MICHENER: I don't know. I haven't had a  
4 chance to go through the Maryland records on this and I  
5 couldn't tell on the others.

6 MR. ENEY: I would guess it is less than one  
7 per cent, in Maryland.

8 DR. WINSLOW: It is widely scattered. In some  
9 states it is used quite a bit, much more than in Maryland.

10 MR. ENEY: I can recall one occasion in the  
11 past five years, or maybe it's ten, but it is very rare.

12 DR. WHEELER: I don't think the problem is  
13 essentially quantity, but qualitatively. It is a device  
14 used in extremely hot issues, and it may be important.  
15 It may appear once or twice in legislation. It might  
16 involve an extremely political piece of legislation.

17 MR. ENEY: I don't think that has ever happened  
18 in Maryland in modern times.

19 MRS. FREEDLANDER: I'd like to ask Dr. Michener,  
20 he refers to conference committees, but in Maryland there  
21 has been a trend toward joint committees. In every



1 session there have been joint committees. Have you any  
2 statistics on the increase in Maryland on joint committees?

3 DR. MICHENER: As I indicate in the letter, I  
4 have not had the chance to do any work on developing  
5 statistics on Maryland's experience. I think it should be  
6 done, but I do not have it.

7 MRS. FREEDLANDER: Joint committees are on the  
8 increase.

9 DR. WINSLOW: The use in Maryland is on individu-  
10 al items and not generally in the system.

11 MR. ENEY: It is actually not a joint committee.  
12 It is a joint meeting of the two committees.

13 MRS. FREEDLANDER: You do have joint committees  
14 listed in the committee list in the legislature as standing  
15 committees. We have some standing committees -- I can't  
16 think of them right off -- but something on appropriations,  
17 in which there is a joint committee. It is a standing  
18 committee -- do you recall, Doctor?

19 THE CHAIRMAN: They would usually be getting  
20 together for that purpose, but I doubt very much if they  
21 have continuing meetings. I know one thing that is true,





1 because I am involved in this, every now and then there  
2 are joint hearings and this is one way by which a bicameral  
3 body can break through the unattractiveness of bringing  
4 administrative heads down on two or three occasions in  
5 order to appear for hearings, and this has been happening.  
6 It is kind of interesting as to how the structure of bi-  
7 cameralism tries to adapt itself in order to avoid com-  
8 mittee overhauling.

9 DR. MICHENER: To anticipate something further  
10 on, in connection with joint committees, I didn't mention  
11 the fact of duplicating appearances on the administrative  
12 people which is a serious problem on the Federal level  
13 because, from what little I know about Maryland here, I  
14 didn't find that to be a problem.

15 THE CHAIRMAN: Yes, it is.

16 DR. MICHENER: Is it? I didn't know.

17 THE CHAIRMAN: Yes.

18 DR. MICHENER: I haven't had a chance to do any  
19 research on the Maryland experience, but I wouldn't assume  
20 it would be as serious here as on the Federal level, but  
21 going on to joint hearings and joint committees, the



1 unicameralists recognize this argument, that this is a  
2 possible reform of the bicameral system. Now, it might  
3 be quite helpful to point out, though -- and again, I  
4 don't know here about the particular Maryland experience --  
5 that basic work in the legislature is done in committees  
6 and, if you have joint committee hearings, you have  
7 actually taken a major step toward a unicameral legisla-  
8 ture and the argument is, why do you have joint hearings  
9 and then go to separate legislative consideration.

10 MR. DELLA: Actually, what they do in the  
11 legislature, there are no official joint committees, that  
12 I know of, and I've been working around there for fifteen  
13 years, other than occasionally they have a joint committee  
14 on the budget, as such. So that both houses have the same  
15 knowledge of what has been discussed, so that when the  
16 appropriations or the budget comes before the committees,  
17 they are going to talk in the same line of thinking.

18 However, in the hearings, they have sometimes  
19 joint hearings between the house and senate committees in  
20 order to expedite the time -- so that the members of both  
21 houses can hear the testimony presented and they do not



1 have to have a second hearing on a controversial issue  
2 when it gets to the other house. That is my experience.

3 MR. ENEY: A joint hearing doesn't mean joint  
4 consideration.

5 THE CHAIRMAN: A good point. And they don't  
6 do it on all occasions. I am appearing next week before  
7 the House Education Committee and before the Senate  
8 Education Committee on two different days.

9 MR. DELLA: And the same people have to come  
10 down and testify before both houses, if they are inter-  
11 ested.

12 DR. WINSLOW: I was going to remark to the  
13 degree, I want to emphasize Dr. Michener's point, to the  
14 degree that joint committees, whether regular standing  
15 committees or occasional, as you suggest, Mrs. Freedlander,  
16 it is perfectly obvious that to do this gets right in the  
17 way of this claim on the part of bicameralists that you  
18 get a second consideration, but you don't. The considera-  
19 tion which is given to committee reports in the Maryland  
20 Legislature, as well as a great many others on the floor  
21 of the house or senate, as far as the effects are concerned





1 is extremely slight.

2 A study was made some years ago of the Maryland  
3 situation to check what actually happens on the floor as  
4 compared to what the committees have brought in and the  
5 amount of change in legislation which comes about on the  
6 floor of the house or senate is relatively negligible.  
7 So that they accept the committee report. If they accept  
8 a committee report of a joint committee, then they have  
9 gotten rid of their claim that they get a new and fresh  
10 look at it.

11 THE CHAIRMAN: All right.

12 DR. MICHENER: Another attack was made on  
13 bicameralism is the fact that with two houses you get  
14 rivalry between them, and I cited here it is well known  
15 and a recent example was between the house and senate  
16 appropriations committee, where the Federal propositions  
17 were held up for a number of days because the two chairmen  
18 couldn't agree as to which side they were going to sit on.

19 One of the serious objections to bicameralism  
20 is the two chambers, conference committee, prevents the  
21 electorate from knowing who was actually responsible for



1 the final version of the bill and knowing who they should  
2 hold accountable; that the bills pass the houses in two  
3 different forms. It goes to conference. Everyone may be  
4 in favor of it and yet the result may be undesirable and  
5 the legislators in their various and conflicting roles are  
6 not accountable to the people. A voter cannot say, you  
7 did it, you voted and it was your vote that carried it or  
8 it went the other way. There is a confusion of roles of  
9 responsibility and that this is undesirable and then, of  
10 course, they make the claim that in unicameralism you have  
11 clear accountability.

12 Then they go through a whole series of claims  
13 for the positive merits of unicameralism; that it's more  
14 efficient, the bills get through, progress at an even pace.  
15 The peak of the legislation comes at the mid-point of the  
16 session, not the end of the session. So that it is a more  
17 efficient system that gives more individual consideration  
18 to the particular bills. You have, as a result, also a  
19 higher quality of legislation.

20 I won't go into the question whether the legis-  
21 lators have higher prestige. This is claimed. A claim is





1 it is more representative, you have a more representative  
2 system under unicameralism. There are some statistics  
3 on Nebraska. I don't know for certain -- I think they  
4 do, myself.

5 You get into the argument here basically as to  
6 whether you have a more representative legislature if you  
7 have more members or fewer members. This is the basic  
8 question involved here and you can make arguments either  
9 way on that. We have already talked a little bit about  
10 the quality of the enactment of legislation, one of the  
11 claims made for unicameralism. I won't go into that any  
12 further.

13 Another claim that is made, and this one seems  
14 to be fairly factual, is that with unicameralism you have  
15 no legislator introducing bills just for the sake of  
16 pleasing a constituent with the full expectation it will  
17 never be considered or never considered in the other house.  
18 So that with unicameralism, there is a marked decrease in  
19 the number of bills and, of course, of the number that  
20 are finally enacted, the proportion is higher that finally  
21 became law.



1 Another claim for unicameralism, of course,  
2 it brings the lobbyist out in the open. We covered that.

3 MR. SCANLAN: How is that? I don't follow  
4 that conclusion. Why does it bring them out in the open  
5 any more?

6 DR. MICHENER: The claim here is based on  
7 the reasoning that in two houses the legislator is sub-  
8 jected to influence from the lobbyists, again at the con-  
9 ference committee, and you do not know just why or how the  
10 final version is arrived at.

11 In a unicameral house, where the votes are  
12 on public record, demanding the votes for or against the  
13 amendment, and if he is voting consistently in accord with  
14 the wishes of the lobbyists, this will soon become apparent.  
15 This is not apparent in a bicameral legislature because  
16 there are too many ways to exert influence not out in the  
17 open. Even if you have open, recorded votes every day,  
18 you still have the possibility of prior arrangements, that  
19 the two chambers will vote different ways and you have to  
20 have something come out of conference. It may come out of  
21 conference in a fashion not passed exactly -- I should say



1 in language not exactly duplicated in either of the bills  
2 that came through either house, and there is no chance to  
3 amend this afterwards.

4 So, then the legislators vote for the bill and  
5 they say, I had to vote for it. It was either this or  
6 nothing. This is not true, unicameralists say, with a  
7 unicameral legislature. There the legislator is publicly  
8 accountable for his vote and he has to defend it on the  
9 ground of its merits, not that he had to take it or leave  
10 it, or so on, and if he votes consistently in line with a  
11 lobbyist, this will soon become obvious.

12 MR. SCANLAN: I notice a sentence here, "It is  
13 not uncommon for a Nebraskan legislator to denounce a  
14 lobbyist by name on the floor of the house." We have had  
15 that experience in Maryland. I don't think that is any  
16 particular virtue of the legislators in a unicameral  
17 system.

18 DR. WHEELER: I think there is an obvious argu-  
19 ment behind this often made in the defense of unicameralism,  
20 which is simply, this is a more simple structure and more  
21 easy to keep your eye on things. For example, I suppose,





1 the fourth estate is there in small numbers and, of course,  
2 if they are reporting on two houses, they are going to have  
3 that much more trouble reporting than in one house. I  
4 think this is the basic argument.

5 MR. SCANLAN: Yes, the press. I know we have a  
6 unicameral council in Montgomery County and the atmosphere  
7 is fairly thick with lobbyist influence. That wasn't so  
8 in the previous council. It depends, I think, in a good  
9 measure on the men involved.

10 I don't know whether the organizational struc-  
11 ture either makes or mars the influence lobbyists exert  
12 on individual legislators. That depends on the quality  
13 of the person and how closely the electorate police them.

14 MRS. FREEDLANDER: Mr. Chairman, does it also  
15 depend on the quality of the law that you have regarding  
16 lobbyists, whether or not you require them to register and  
17 keep a record of who is supporting them, who is financing  
18 them and the states --

19 MR. SCANLAN: Conflict of interest legislation.

20 MRS. FREEDLANDER: You flush them out in the  
21 process of the enforcement of a good law rather than by



1 unicameralism.

2 MR. DELLA: I think, too, you have to recognize  
3 the value of the lobbyist. The legislators, and you will  
4 find this any time you have a new election, the legislators  
5 feel that they want to read all the bills and make their  
6 own decisions, and especially in the first year of their  
7 stay in the legislature, the lobbyist can't get to them  
8 except to talk to them, but you don't sway them one way  
9 or the other; but, towards the end of the session when they  
10 find the backlog of bills or the amount of bills intro-  
11 duced have been so great, that they cannot read them or  
12 understand some of them, and then they start to pick out  
13 the certain lobbyists that are familiar with that particu-  
14 lar field who they feel they can have confidence in giving  
15 them the facts they need to help make up their minds which  
16 way to vote.

17 So, I don't see where unicameralism is going to  
18 make any difference as far as the work of the lobbyist or  
19 the importance of the lobbyist. I think a lot of it  
20 depends on the caliber of people who are elected into the  
21 legislature, as to what their understanding might be of





1 the general problems that are going to come before them  
2 to make decisions on. To expect a group of people to  
3 accept in toto the work of the committee, I think, is  
4 unrealistic, because there are going to be many people  
5 who are going to feel that what the committee has done  
6 may not need to have been done, the corrections made by  
7 the committee, for the bill to be enacted.

8 It seems these people sometimes need the lobby-  
9 ist to point out certain things that the committee may  
10 have done that may not be to the best interests of the  
11 people. Again, this comes down sometimes with a biased  
12 point of view, based on maybe it would be from a business  
13 point of view, insurance or labor or whatever the case may  
14 be, but I think in the over-all picture, the lobbyists  
15 play a very important part in the makeup of the legis-  
16 lative procedure and at the same time are a guiding light  
17 for many of the legislators who have been there for many,  
18 many years, even though, with their experience, they find  
19 they cannot keep up with the kind of trend being developed  
20 today because of the education of the people on what the  
21 issues are and what they desire the legislator could do



1 with regard to these issues, that many people introduce  
2 innumerable bills of which many of them do not have a  
3 chance to get through because of the tremendous amount  
4 of work involved and, I think, years ago when they used  
5 to have a minute amount of bills going into the legislature,  
6 it makes a different picture than it does today when you  
7 have a flood such as last year in the Maryland General  
8 Assembly, of over 2,000 bills. This year it is going to  
9 be another 2,000 bills.

10 It is impossible for the legislators to pursue  
11 them with any correct meaning of what they intend to do.

12 THE CHAIRMAN: I don't want to pursue this  
13 discussion on the matter of lobbyists, and I would rather  
14 Mr. Kentner who is a native Nebraskan get into this, but  
15 I've gotten up there every now and then and I know the  
16 stories about the lobbyists that have kept Nebraska a so-  
17 called white state, not racial in connotation, but on maps  
18 that show states that have no sales tax or income tax.  
19 Nebraska is one of two in that category, and every time I  
20 get up there, in terms of appropriations that would go for  
21 education and more closely allied to those that operate in



1 higher education up there, I know the influence of the  
2 lobbyist is quoted. So, they have their share of them,  
3 and I will let Mr. Kentner talk about that.

4 MR. BROOKS: Let me add one thing relevant to  
5 this before we get back to the other part of the paper.  
6 I think part of the points about lobbyists is a weighing  
7 of the degree of impact lobbyists should have on the  
8 legislature, not that they should be available as legis-  
9 lative specialists on particular legislation. They  
10 definitely have a value in that regard, but I think the  
11 question is should they be the paramount influence as far  
12 as outside nonlegislator influence is concerned, and the  
13 point in regard to unicameral legislation is if you have  
14 a simpler system of legislation, then the general public  
15 understands it and can also influence legislation.

16 Whereas, under a bicameral system, it is argued  
17 that the lobbyist is a legislative technician himself and  
18 part of his value, fifty per cent of his trade, so to  
19 speak, is knowing the technical procedures that legisla-  
20 tion has to go through in order to ever eventually be  
21 enacted and to know the committee system, and therefore





1 knowing the complication of the legislative process is a  
2 part of their value and it is therein they wield a great  
3 extent of influence as against the general public.

4 THE CHAIRMAN: All right, let us get to another  
5 point. I think we have pursued this to some interesting  
6 angles.

7 DR. MICHENER: The next claim is inherent in  
8 some of the ones we discussed, that unicameralism pin-  
9 points responsibility for legislative action. I don't  
10 think we need to consider that further.

11 The other claim made here, that unicameralism  
12 is more economical, is relatively a minor claim and this  
13 is a smaller expense of the state legislatures, but you  
14 do reduce added expenses. I have several others that I  
15 lumped together that are implicit in what we said before,  
16 that unicameralism results in increased public understand-  
17 ing of what is happening. It promotes the development of  
18 a unified legislative leadership and closer cooperation  
19 with the Governor.

20 MR. SCANLAN: That last point, I wait to hear  
21 from the gentleman from Nebraska. My understanding is



1 that this is precisely the situation that does not exist  
2 in Nebraska. There is not a close relationship between the  
3 executive elected as a Democrat or Republican and the so-  
4 called partisan legislators, each of which is a king  
5 unto himself, in his own domain. I question that claim.

6 DR. MICHENER: Not to pursue this any further,  
7 since we will take it up later, the other big rebuttal that  
8 the unicameralists make to the arguments against it ad-  
9 vanced by the bicameralists relates to the question of the  
10 need for a second review.

11 Unicameralists, not so much in this country as  
12 in European countries, have said if you want a review, we  
13 can still give it. We can set aside a portion of our  
14 members as a reviewing body. Let them have independent  
15 review, but have an over-all decision made by a vote of  
16 the legislature as a whole. So that you have a review  
17 within the confines of a unicameral system.

18 So far as I know, this has not been done in the  
19 United States or in Nebraska. In fact, I know it hasn't  
20 been done. Most of the Canadian provinces have unicameral  
21 legislatures and, as far as I know, they have not adopted





1 this; but this has been done in some of the Scandinavian  
2 countries. Well, that's it.

3 MR. ENEY: Dr. Michener, it seems to me there  
4 is no objective or statistical test by which you can re-  
5 solve this question; it is purely subjective and it is a  
6 matter that someone has to resolve on the basis of experience

7 I wonder if there has been any discussion or  
8 study made as to whether the experience of municipalities  
9 which, as we all know, are practically universally now  
10 unicameral, is applicable on the state level or whether  
11 the municipal legislatures are of such a different character  
12 and kind that they do not furnish any guide for us here?

13 DR. MICHENER: I am not that familiar with  
14 them to be able to answer your question. The argument,  
15 though, that was advanced in the move to unicameral city  
16 legislatures was that these were business operations from  
17 which you want to exclude political considerations, and  
18 the model here was the corporation and the argument was  
19 made that we've got a city manager and we turn over the  
20 business affairs of the city to him and this should be  
21 conducted, as I say, parallel to a corporation.



1 I don't know how acceptable a comparison with  
2 the city legislatures and a unicameral state legislature  
3 would be as far as convincing people. This is not answer-  
4 ing your question, though.

5 MR. ENEY: I was particularly thinking of  
6 Maryland. As Dr. Bard mentioned, we have had the City  
7 Council perhaps since the mid-20's in Baltimore City, and  
8 you have counties with charter governments, all of which  
9 have unicameral councils.

10 I am sitting here wondering what are the differ-  
11 ences between the County Council in Montgomery County, for  
12 example, and the legislature that would perhaps make uni-  
13 cameralism desirable in one and not in the other?

14 THE CHAIRMAN: And we certainly want to hear  
15 from Dr. Graves on this, but some of the arguments I get  
16 to read would primarily be concerned with the sheer  
17 geography involved and the heterogeneity of the state,  
18 let us say, in relationship to that of the local unit,  
19 which would tend to be more homogeneous.

20 Let's hear from Dr. Winslow on this and then  
21 turn to Dr. Graves, so I will know we will deal with some



1 of these ideas again and perhaps deal with some new ones.

2 MR. DELLA: I would like to make one comment on  
3 what the Chairman pointed out. One of these people may  
4 want to elaborate on it.

5 The difference between the operation on a local  
6 level and the state level, I think, is based primarily on  
7 the fact the City Council in Baltimore meets every week,  
8 so that they have a chance to bring back legislation if  
9 there happens to be something in error or if the people  
10 haven't voiced their opinions as they think they should  
11 have. In the Maryland General Assembly, unless they change  
12 the procedure, they meet for seventy consecutive days and,  
13 with the flood of bills going through, which most of the  
14 time the people are not aware of the type of legislation  
15 that is being proposed and you have to do a terrific  
16 educational job of getting them to watch everything that  
17 went through the legislature, to be aware whether it is  
18 going to affect them beneficially or adversely.

19 I think, based on this, this is one of the  
20 reasons why they cannot operate the same as they do on the  
21 city level. If they have something like Pennsylvania, or





1 some of the other states, where the legislature meets for  
2 a short period of time and recesses and comes back and  
3 recesses again and operates all year through, it would  
4 probably be something different than we have in Maryland.  
5 When you have a continuous operation of the Maryland  
6 General Assembly, it is entirely different than when you  
7 have a weekly operation.

8 THE CHAIRMAN: We are going to get into the  
9 factor of whether this body believes in the work papers  
10 there ought to be some descriptive statement concerning a  
11 continuing body of the legislature or by various sessions,  
12 such as you described a few moments ago. This is true,  
13 and we will make note of this, I hope, 'so that we don't  
14 get away from it. Dr. Winslow?

15 DR. WINSLOW: May I make two comments prompted  
16 by Mr. Eney's question? One is, I doubt very much if you  
17 can argue from the local unit to the state unit. The  
18 situation, the conditions, the business to be done are  
19 quite different. I think you can argue, however, if you  
20 wish to, on this basis.

21 Cities went from bicameralism to unicameralism.



1 Now, it would be possible, I think, to get some data on  
2 what happened in that exchange from one to the other at  
3 the local level, because the original arguments for a  
4 bicameral city council were almost identical with those  
5 which are made for the bicameral state legislature; that  
6 is, it was a question of the representation of different  
7 interests, it was a question of a review, so you don't get  
8 hasty and ill-considered legislation, et cetera.

9 So that the evidence, I think, would have to  
10 come from what has happened not with respect to a compari-  
11 son between the local and the state, but what has happened  
12 locally between one legislature and the other.

13 The other thing which I would like to suggest,  
14 and I won't take time, Mr. Chairman, to present it now,  
15 that there is considerable evidence, statistical evidence,  
16 even, with respect to this matter of how much is there to  
17 this reconsideration by a second chamber. There are  
18 statistical studies on this on individual state legisla-  
19 tures to show how important or unimportant, as you going  
20 to interpret it, this matter is of reconsideration by the  
21 second house.





1 MR. ENEY: There are statistics to show as to  
2 in how many instances there are changes made and how many?

3 DR. WINSLOW: Yes.

4 THE CHAIRMAN: I think it would be interesting  
5 and important for our resource person to dig this up, our  
6 researcher, Mr. Eney.

7 MR. ENEY: I think it would be very interesting.

8 THE CHAIRMAN: You folks may want to make note  
9 of this, but perhaps Dr. Graves and Dr. Wheeler and Mr.  
10 Kentner will get into this. So, let us move to Dr. Graves,  
11 and we want to thank you again, sir, for taking time from  
12 a busy schedule to be with us.

13 DR. GRAVES: Mr. Chairman, members of the  
14 Committee, it is hardly necessary for me to say, I suppose,  
15 that I am not here as a representative of the library,  
16 although I happen to be employed there. I came at the  
17 personal invitation of a colleague and a friend of many  
18 years, Professor Winslow, and I am happy to be here.

19 My approach to this is a little different than  
20 that which has preceded, which has been very interesting,  
21 every bit of it. I have a sort of a habit, when I tackle



1 a problem, of trying to find out how we got where we are  
2 or, if you want to put it, "How we got into the mess that  
3 we is in." And, having done that, it seems to me that as  
4 rational human beings we are in a little better position  
5 to figure out what we ought to do next, where we go from  
6 here.

7 I start this little survey with the observation  
8 that it seems to me that in this whole controversy over  
9 unicameralism and bicameralism that there has been a mini-  
10 mum amount of research and of talk; in other words, there  
11 has been a whole lot more heat than there has been light.

12 The beginning of this goes back, of course,  
13 to the colonial times. We had bicameral legislatures.  
14 In the latter colonial period, we began to get a few  
15 unicameral ones which lasted for a relatively short period,  
16 but it seems to me interesting that the people in these  
17 several colonies at that time were much more venturesome,  
18 much more willing to try new ideas and experiment than have  
19 been the people that lived during our lifetimes.

20 These unicamerals existed in Georgia, Pennsyl-  
21 vania, Vermont. Georgia changed to a bicameral in 1789 or



1 '90; Pennsylvania at the same time. Vermont held theirs  
2 until 1936.

3 Professor Carroll of the University of Vermont  
4 made a special study of the experience under some sixty  
5 years of unicameralism in Vermont and he concluded that  
6 nothing in the experience of that State justified any  
7 assumption of the superiority of bicameralism, but the  
8 political conditions were such that the change was made  
9 and from that date until 1937, for almost precisely 100  
10 years, bicameralism in the legislatures of our states  
11 ruled with complete uniformity.

12 There have been in the Twentieth Century three  
13 or four periods of considerable interest in unicameralism.  
14 The first of these was in the progressive era shortly  
15 after the turn of the century when, from 1911 to '15,  
16 and a little bit farther, I suppose, there was considerable  
17 education toward unicameralism. As a matter of fact, the  
18 proposition was gotten on the ballot in fifteen states  
19 and, in one or two of them, they voted on it more than  
20 once; but the result was always the same. The proposal  
21 was rejected by votes which ran normally about two to one.





1           After the end of World War I, we got the first  
2 edition of the model state constitution which proposed a  
3 unicameral system and that has continued through some six  
4 editions to be the position of the National Municipal  
5 League which sponsors the model state constitution.

6           This was the only specific achievement during  
7 this period in our own country, that is, at the state  
8 level. It is notable that unicameralism was making dis-  
9 tinct gains in the provinces of Canada and that our cities,  
10 which has been referred to here already, were moving from  
11 a bicameral to a unicameral council.

12           At this point, we stopped for a few years,  
13 until 1934, and through a period of about ten years, there  
14 were some very interesting things that happened.

15           The first, of course, was the Nebraska vote.  
16 I watched this very closely, and maybe some of the rest of  
17 you did, but I recall these things which may be of inter-  
18 est to think of at this time. Some of the members of the  
19 group here were talking this morning about the fact that  
20 Nebraska had not always been as conservatively inclined  
21 as it is now, that there had been considerable liberal



1 sentiment of one sort or another in the State; but the  
2 main point here is that George W. Norris was for these,  
3 and a very interesting thing happened in connection with  
4 the campaign.

5 In late September, just about a month before  
6 the election, Mr. Norris was in his office on Capitol  
7 Hill and got a telephone call from one of his people back  
8 home and he asked him first, Senator, are you really very  
9 much interested in this proposal, and the Senator said,  
10 you know I am. Well, this political lieutenant said, well,  
11 in that case, I would recommend that you come back home  
12 as soon as you can because this proposition is in trouble,  
13 in deep trouble and, unless we do something about it, we  
14 are going to lose.

15 So, that night or the next morning, Mr. Norris,  
16 who was then seventy-five years of age, went back to his  
17 home State and I was told that he traveled up and down,  
18 back and forth across the State to every hamlet and, as  
19 he drove through the country, he saw a farmer in the field  
20 and he stopped and talked to him. He stopped in the little  
21 stores and the towns and villages and put on a perfectly





1        tremendous campaign, with the help of some of his sup-  
2        porters, but still a tremendous performance for a man of  
3        his age; and when the election day came and the votes were  
4        in, George Norris had won.

5                Now, what did he want? The main thing was that  
6        he was steamed up about this conference committee business  
7        which seemed to him just an abomination in the sight of  
8        the Lord. Now, there could have been conference committee  
9        abuses, of course, many times and in many jurisdictions,  
10       but this seemed to me to be a pretty small item to seize  
11       upon to make such a business out of. Well, anyhow, when  
12       the vote was over in Nebraska, we had a tremendous surge  
13       of interest throughout the country. There were a lot of  
14       interesting things told about what happened at that time.

15               Senator Toll, Henry Toll, a friend of mine,  
16       was out there and, of course, at that time he was director  
17       of the council for state government. He went to Lincoln  
18       when the new legislature was inaugurated and he was walk-  
19       ing along the streets there in the capitol with Senator  
20       Norris -- and this illustrates a point that I tried to  
21       make, that so much of our reaction to this business has



1        been emotional. They were walking along the street.  
2        Senator Toll said, this experiment that you are inaugurating  
3        here today -- Senator Norris stopped in his tracks stone  
4        still and stared at him. Mr. Toll realized that he had  
5        committed some grievous error. I beg your pardon, Senator;  
6        this demonstration. Well, that was all right.

7                Another interesting sideline, what happens if  
8        you make a change of this sort? I always thought this was  
9        really amazing, that a man with the experience that  
10       Senator Norris had could apparently be so completely  
11       naive in his reaction to a situation such as this. The  
12       vote was in November, naturally, in 1934. A month later,  
13       the council of state governments had its assembly of the  
14       states. They used to call it the interstate assembly, in  
15       those days, and they are always held in Chicago now, but  
16       in those days they met around in different cities and  
17       that particular one was held right here, in this City at  
18       the Lord Baltimore Hotel.

19               I remember that I came down, as I frequently  
20       did, to sit in on those meetings, at which the current  
21       issues were discussed for the benefit of legislators in



1 the ensuing session and, because of the widespread interest  
2 in this vote in Nebraska, they asked the speaker of the  
3 old bicameral legislature to appear here before the  
4 assembly of the states and explain and discuss what had  
5 gone on; and I never forgot the little incident.

6 The man's name was O'Hara. He was opposed to  
7 the shift, but when the votes had been counted and the  
8 results had been determined, he went to Senator Norris  
9 and he said, Senator, you know, I was opposed to this, but  
10 the people have spoken and that's it. Now, what must we  
11 do? And Senator Norris said to him, well, my good man,  
12 you don't have to do anything. Up to now, we've had a  
13 bicameral system. On January 1st, 1937, we will have a  
14 unicameral system.

15 I say, how anybody could be so naive, I don't  
16 know. The record shows, of course, that the legislature  
17 of the State of Nebraska spent two years of continuous  
18 and very, very hard work revising and rewriting the  
19 statutes of the State of Nebraska. A lot of it was very  
20 simple, editorial work, changing references from two  
21 houses to one house; but a lot of substantial revision





1 had to be made and substantial changes would have to be  
2 made in this State or any other. Now, that is nothing  
3 insurmountable, but that is a little proposal.

4 There was a proposal for unicameralism in the  
5 1937 sessions of the legislatures in twenty-two states,  
6 but nothing happened. Because of this widespread inter-  
7 est, the Council of State Governments instituted some  
8 polls. I don't know how much polls are worth. I think  
9 all of us have our doubts about their validity and their  
10 usefulness, but it is rather interesting sometimes to  
11 see what happens as a result of the poll that is properly  
12 conducted. They got the American Political Science  
13 Association to make a poll of its members and the political  
14 scientists were, and I think probably still are, about  
15 nine to one for unicameralism. The Council made a poll  
16 of the legislators, the result of which you might predict;  
17 it resulted in a vote of nine to one against.

18 I say, I don't know how significant that was,  
19 or either of these were, but it is interesting, and for a  
20 long time I was inclined to side with the legislators.

21 During a period of my life, I have had rather



1 extensive contacts with legislators in many states. I  
2 don't know very many now personally, but I did know quite  
3 a few for a period of time due to my connection with the  
4 Council and then, after World War II, when we were setting  
5 up the National Legislative Council Conference; in the  
6 course of these years, I talked with many legislators  
7 about this and, of course, the ones who take part in  
8 Council activities in the National Legislative Conference  
9 and such organizations are, for the most part, the cream  
10 of the crop and very, very few of them were favorably  
11 disposed to unicameralism.

12           You might say it was because they were familiar  
13 with the other system. I don't think it was only that.  
14 I couldn't help feeling, though, that their experience,  
15 and these were the more able members of the legislative  
16 fraternity, I couldn't help but feel that their views  
17 were entitled to some serious consideration. Anyway,  
18 Nebraska adopted it and the thing was successful there  
19 and has been, and I think there is no argument on that  
20 whatsoever.

21           Professor Senning who is a member of the





1 department of the university for many years wrote a  
2 commentary at the end of the first unicameral session,  
3 in which he reported that this session demonstrated an  
4 absence of hasty legislation, a simplified and smoothly  
5 working procedure; a better personnel, the liberation of  
6 the legislature from the domination of the Governor as the  
7 titular head of his party, and the leaders of the political  
8 parties and the general publicity by means of which the  
9 unilateral legislature had revived, as it were, an interest  
10 of the people of the State in their law-making body. I  
11 won't elaborate on that because that is a report of an  
12 evaluation of the Nebraska experience.

13 After World War II, there wasn't much agitation  
14 then for this change, but the model constitution continued  
15 to recommend it. The American Political Science Association's  
16 committee on American legislatures was published  
17 with a very favorable attitude toward unicameralism, and  
18 I had one little interesting personal experience in Ann  
19 Arbor which I think may be worth mentioning.

20 For a number of years, I used to go to Detroit  
21 to attend a program there at Wayne University and sometimes,



1 when I finished there, I would go over to Ann Arbor to see  
2 some of my friends there and, on this occasion, Carroll  
3 Heddy said to me -- he was in charge of the state course  
4 at that time -- he said, my state course meets tomorrow  
5 morning at 9:00. I wonder if you will come and meet with  
6 us and talk to us, and I agreed I would. They had been  
7 using my book there for a long time. I couldn't very well  
8 refuse, if I wanted to, but I was very glad to do it.

9 When I got there the next morning, here was a  
10 member of the Michigan State Senate. Carroll hadn't known  
11 he was coming and he was sort of embarrassed that most  
12 times he had no visitors and here he had two in one morning  
13 and only one class hour, and we agreed that we would pro-  
14 ceed and, believe it or not, this senator happened to be  
15 one who was a rip-roaring supporter of unicameralism and  
16 he presented his view, I presented mine.

17 I wasn't for it. I wasn't opposed to it. I  
18 simply said, and I still think that there isn't anything  
19 that has been done in Nebraska that cannot be done in  
20 Maryland or any other state that has a bicameral system,  
21 if anybody really wants to do it. You could reduce the



1 size of the legislature. You could reduce the number and  
2 the size of committees. You can establish legislative  
3 aids, as most of the states have done. There are a whole  
4 lot of things you can do perfectly well, if you really  
5 want to do them. You don't have to adopt unicameralism.

6 I don't know whether it helps or not, but it  
7 certainly has seemed to, because of the Nebraska exper-  
8 ience.

9 Now, I have an interesting question, I think  
10 it's an interesting question with regard to this, for  
11 which I don't know any answer. There is agreement that  
12 this forum has worked well in Nebraska. The State may  
13 be a larger area, but the population is relatively small  
14 and I think probably about as homogeneous as you could  
15 find in any state in the union. Now, would this work,  
16 I don't know, in Pennsylvania, New York, Michigan, with a  
17 greatly larger population of a highly heterogeneous sort?  
18 I don't know. Actually, I would like to know.

19 I would like to see some experiments. Although  
20 Senator Norris objected to the word, I would like to see  
21 some experiments in other states, so that we could





1 determine, actually find out whether the improvements that  
2 have occurred in the State of Nebraska would occur like-  
3 wise in Pennsylvania or Michigan or New York or other  
4 states.

5 Well, now we come to what I call the fourth  
6 period, the period we are in now which follows the Supreme  
7 Court decisions and all of the tremendous hullabaloo that  
8 we have been living through this problem of reapportion-  
9 ment. This has given new life, new vitality, and new  
10 interest to the problem of unicameralism. Well, as I say,  
11 in the past, I certainly have not been an ardent advocate  
12 of it. It seems to me that this situation, this current  
13 situation strengthens its claim to consideration for  
14 probably three reasons.

15 We've always said that we have two houses, so  
16 we could have a different basis of representation. Well,  
17 theoretically, you still can, but the Court has told us  
18 that the main consideration has to be population and, if  
19 you use any other factors, they are used in a secondary  
20 way or in a way which does not interfere with the preva-  
21 lence of the population concept of representation; and



1 people ask, and not altogether illogically, if the two  
2 houses now are going to be set up on the same basis, why  
3 then, why have two?

4 There is, in the second place, the fact that a  
5 great many legislatures, bicameral, and although certain  
6 of them at the present time feel some sort of ill repute;  
7 you get all sorts of reports of unsavory events and failures  
8 out of the state capitols, this one and others. It's all  
9 pretty much the same bolt.

10 There are efforts being made, some very fine  
11 efforts being made to do something to improve our legis-  
12 latures, but it seems that this type of problem, as it  
13 existed for the twenty-five years that unicameralism has  
14 progressed, it makes one wonder if this is at least a  
15 part of an answer to this problem of restoring our legis-  
16 latures; and then, of course, the series of points which  
17 were made by Dr. Michener in his excellent paper, this  
18 second look business.

19 If this were a primary purpose of having a  
20 second chamber or having two chambers, we have other  
21 machinery, other techniques, other ways by which this





1 review now is not only possible, but is being made, any-  
2 way, with the two chambers in existence.

3 Well, I get to the conclusion of these remarks  
4 with the idea that if we are ever going to try unicameral-  
5 ism, and it seems to me this would be an ideal time to do  
6 it, that the conditions are right, which should help to  
7 gain acceptance. Our people are always slow to accept  
8 change at the start, but there has been some change in  
9 these last few years. We are all aware of them; and if  
10 upon consideration of all the evidence you get, you feel  
11 that it might be worthwhile for the State, I would be  
12 inclined to think that you wouldn't have any time in the  
13 foreseeable future, you are not going to get a better  
14 time to do it, to try this procedure, this organization,  
15 if you are interested in it and feel that you would like  
16 to be just a little bit venturesome, so far as past  
17 practice is concerned.

18 Okay, I thank you.

19 THE CHAIRMAN: That was just grand. This  
20 historical review is something that I myself have needed  
21 badly and I am sure, Dr. Graves, that you have benefited



1 all of us, so that we might see it in proper perspective.  
2 I was very much interested in your categorization of the  
3 three stages.

4 I wonder, procedurally, if we were to take,  
5 let us say before we open up this for discussion, if we  
6 would take no more than ten minutes, and I don't want in  
7 any sense to state this will be our procedure, but it is  
8 a possibility, for a break and to bring up here our own  
9 sandwiches and coffee which we can get downstairs and  
10 then continue and pursue this while we are having our  
11 sandwich and coffee, and while we hear from Mr. Kentner  
12 and Dr. Wheeler.

13 We have brought Mr. Kentner here as a native  
14 of Nebraska who will bring together some of this history  
15 Dr. Graves has described with a good deal of vividness and  
16 personal relationship up to date, because I am sure he,  
17 like I, couldn't help but to think of the great debate  
18 that went through the State of Nebraska as to whether  
19 they should even put a bust in that statuary hall where  
20 they have the bust of Lincoln; after thirty years, this  
21 occurred. So, he is still a symbol.



1           Would this be a possibility, a ten-minute  
2 break, no more, and come back and we will pursue it  
3 further with these two people and, somewhere close to  
4 2:00, take stock as to when we will meet, as I'm sure we  
5 will have to, for a continuation sometime next week in  
6 order that we would be prepared on the items below that  
7 line that I have drawn, with our recommendations at least  
8 in first draft for the Commission as a whole. Would that  
9 be all right?

10           MR. ENEY: Dr. Bard, I have no idea how the  
11 other members feel. You say some have 2 o'clock engage-  
12 ments. You might put in the alternative, as to whether  
13 any of them would rather go to 2:00 and then take a break.

14           (Discussion held off the record.)

15           THE CHAIRMAN: All right, we will now move to  
16 Mr. Kentner who is going to give us his own observations.  
17 Most of you know Mr. Kentner has lived in Nebraska and  
18 the material which you received gave you some background  
19 on his work. We certainly appreciate the fact that he  
20 has left his offices in Washington to spend this time  
21 with us.

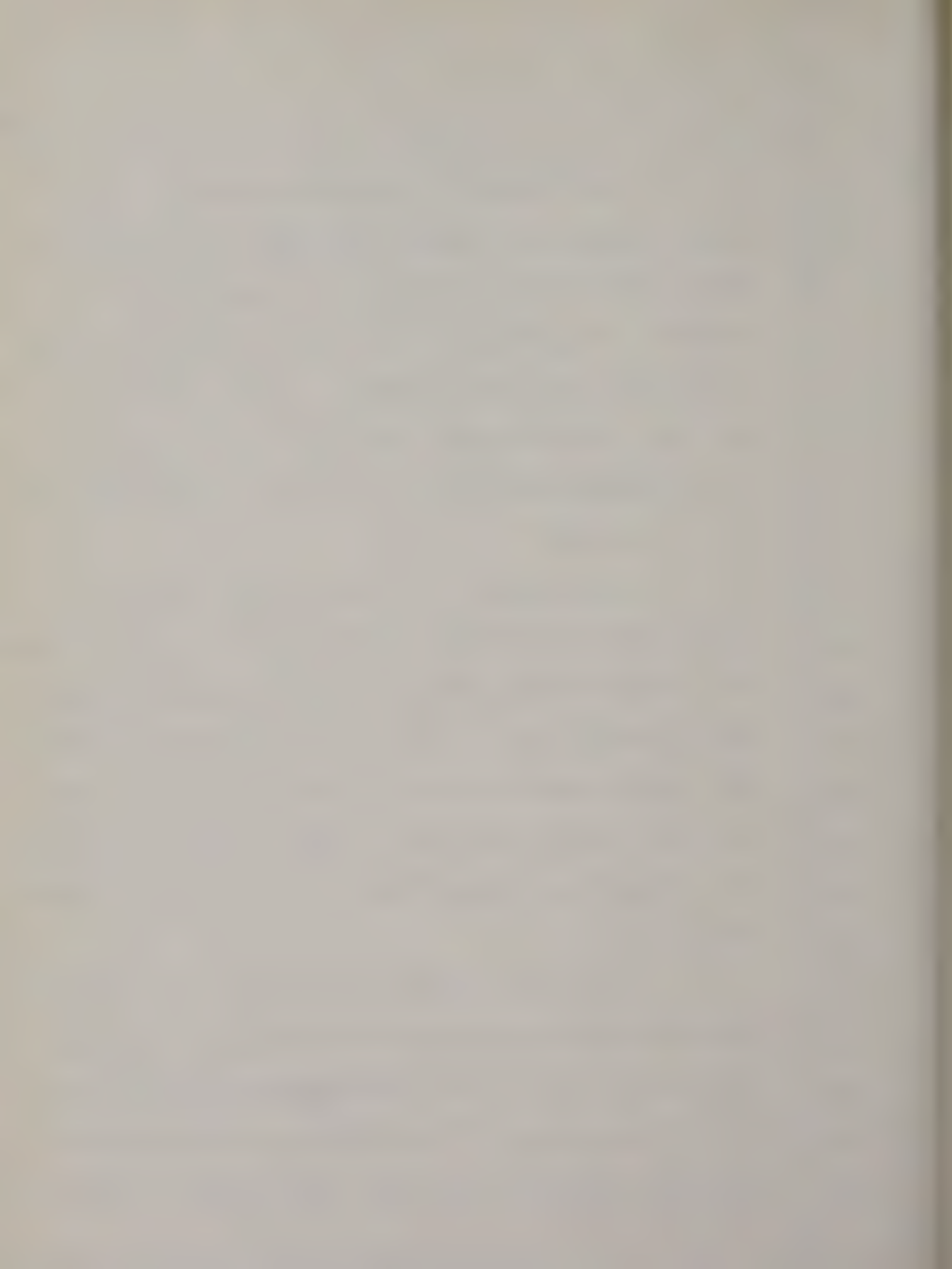




1           MR. KENTNER: I am glad to be here. I am a  
2 special assistant to Congressman Callan from the First  
3 District of Nebraska. I came at the invitation of  
4 Professor Graves who is a friend of many minutes; we met  
5 for the first time this morning. I would also bring  
6 greetings from the country which gets a great deal of  
7 snow during the wintertime. It is sort of like home now.  
8 Down to business.

9           My position, as far as unicameralism vs.  
10 bicameralism is concerned, I think could best be described,  
11 as a Nebraskan unicameralist, I think unicameralism has  
12 served Nebraska well. I am not too worried about whether  
13 other states copy us or not. I think that by and large  
14 most any bicameral can do or can serve a state as well as  
15 the unicameral has served Nebraska. So, I am sort of dis-  
16 interested here.

17           There were several points that were brought up  
18 earlier to which I would like to direct some attention.  
19 First of all, Dr. Bard was commenting that the lobbyists  
20 seem to be very active in the unicameral sessions and he  
21 mentioned specifically the fact that they seem particularly



1 active when it came to legislative consideration of  
2 appropriations for education.

3 I would like to comment that it is not the  
4 lobbyists that are against appropriations for any particu-  
5 lar purpose. It is the people, and the people just don't  
6 like to pay taxes and I think that this feeling is well  
7 reflected in the Nebraska unicameral.

8 Another point that was brought up by Mr.  
9 Scanlan, I believe, concerned the degree of cooperation  
10 between the governor and the legislature, which was  
11 occasioned by a comment in Mr. Michener's paper on Page  
12 16, "This same concentration of leadership simplifies the  
13 working relationship between the governor and the legis-  
14 lature."

15 This statement is correct, I believe. I  
16 believe the existence of only one house does simplify  
17 the relationship between the governor and the legislature.  
18 The relationship, however, between the governor and a  
19 particular legislature does not depend upon the form of  
20 the government. It depends primarily on the personnel  
21 involved. I think the relationship between the governor



1 and the legislature in Nebraska at the present time is more  
2 than adequate for the purposes of coming to grips with  
3 public questions. If you like, we can explore this later,  
4 if you have some questions about it.

5 There are questions involving the problem of  
6 a governor elected on a partisan ticket and the legislature  
7 elected on a nonpartisan ticket. So, if you are interested  
8 in those, we can go into that later on.

9 Another point which was mentioned in the paper,  
10 on Page 13, I believe, was the fact that unicameralism  
11 results in higher standards for the introduction of bills.

12 It should be pointed out that the number of  
13 bills which a legislature must consider, I think, is a  
14 function of several things. One would be the length of  
15 the session. It is possible that it would be a function  
16 of the number of legislators. Nebraska's experience in  
17 this field, however, is, I think, largely the result of  
18 a relatively severe limitation on the introduction of  
19 bills after a certain number of legislative days. In  
20 other words, after a certain point has been reached in  
21 the legislative session, an individual member may no





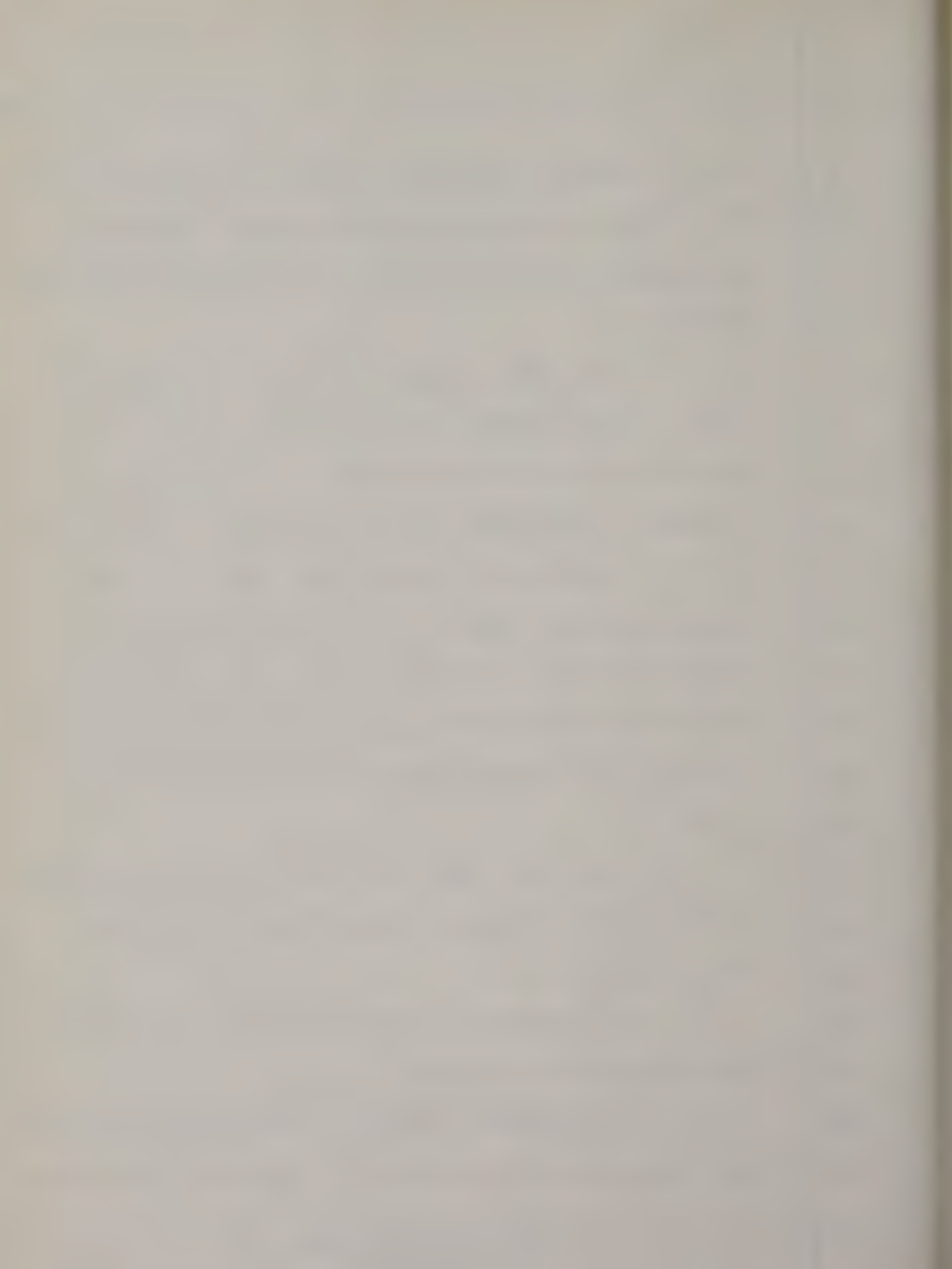
1 longer introduce a new bill. I think this would account  
2 for the relative ease with which Nebraska legislators  
3 have grappled, if you will, with the bills that have been  
4 introduced.

5 One other comment and then I am at your dis-  
6 posal. I would suspect, although this again is a ques-  
7 tion which is not incontrovertible, that the number of  
8 candidates a voter has to know when he goes to the polls  
9 to cast an intelligent vote has been slightly reduced in  
10 Nebraska, and this might be a possible argument for a  
11 unicameral system. I would venture to guess that this  
12 has been of some possible benefit to Nebraska. Whether  
13 it would be of similar benefit to other states, I have  
14 no idea.

15 MR. ENEY: May I interrupt? Is this more from  
16 the unicameral or from the nonpartisan aspect, in the  
17 Nebraska system?

18 MR. KENTNER: I would say from the unicameral  
19 rather than the nonpartisan.

20 MR. SCANLAN: Wouldn't it also be the fact that  
21 they are single-member districts? Each one of them comes



1 from a single district?

2 MR. KENTNER: Yes.

3 MR. SCANLAN: And if you could have a uni-  
4 cameral legislature with multi-member districts, you  
5 would have the same problem of knowing more than one.

6 MR. KENTNER: This could be true.

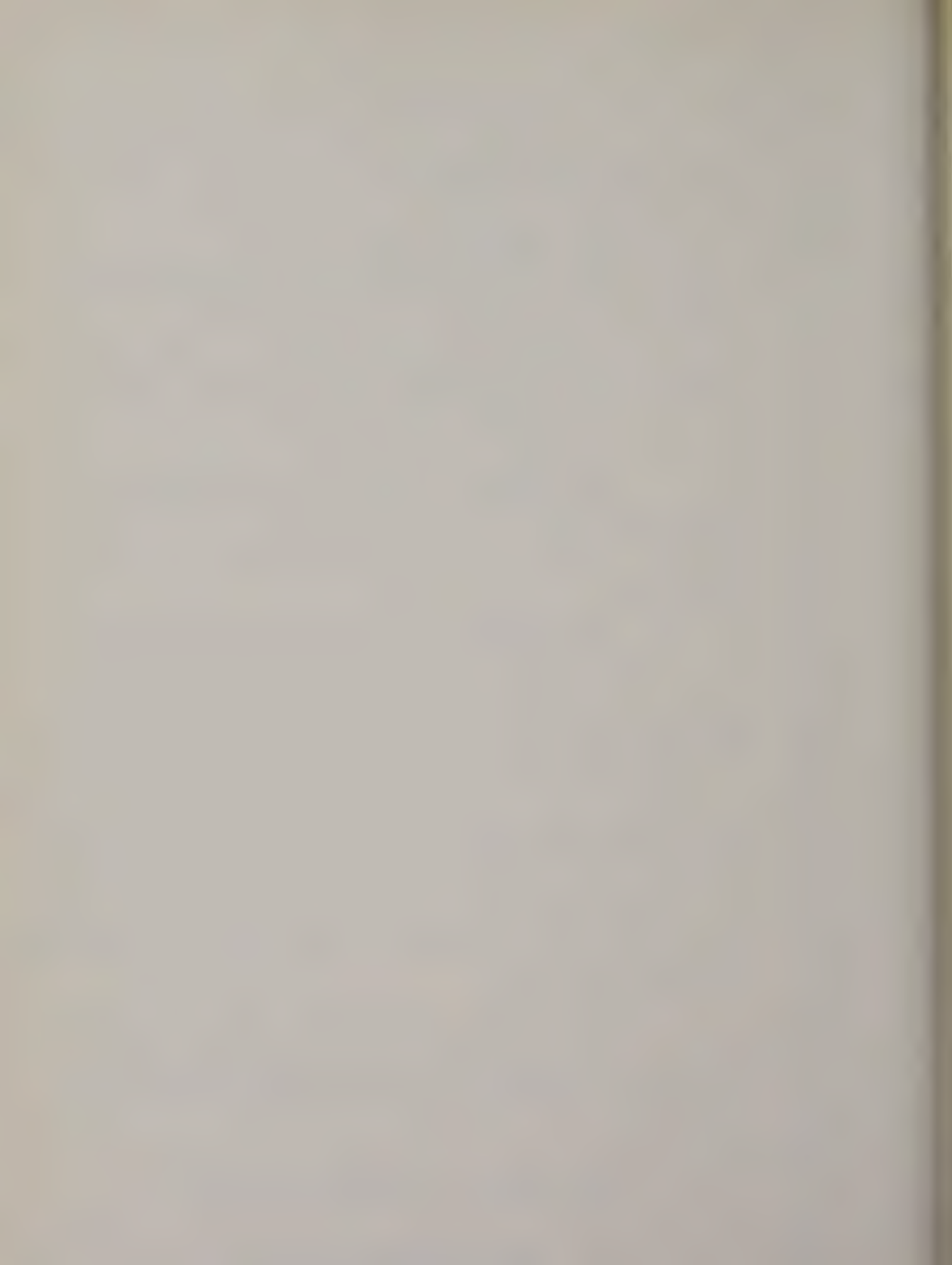
7 DR. WINSLOW: Except that the tendency in  
8 unicameralism is to have a smaller numeral total of  
9 legislators.

10 MR. SCANLAN: You wouldn't have a senate.

11 DR. WINSLOW: And the house in Nebraska has  
12 been reduced in size. So, instead of having -- what is  
13 it -- 142, we have in Nebraska 43, which makes the differ-  
14 ence in the total number of districts we have to have or  
15 the total number of people in an elective district. If  
16 you divided Maryland up into 43 districts, you would have  
17 a different situation.

18 MR. SCANLAN: We could do it very simply.  
19 Let's have a 42-member Senate and eliminate the House  
20 of Delegates.

21 DR. WINSLOW: I go along with that.



1 MR. ENEY: Can you go to the Eastern Shore to  
2 settle that?

3 THE CHAIRMAN: Let's give Mr. Kentner an  
4 opportunity to finish before we open up that point.

5 MR. KENTNER: I have one more point. Mention  
6 was made that Nebraska is made up largely of a homogeneous  
7 population. From a national point of view, this is, I'm  
8 sure, entirely correct. However, from the point of view  
9 of a practicing, sometime practicing politician in Nebraska,  
10 I would say that there are a great number of differences  
11 and many of which are very important to Nebraskans in  
12 general, as well as to the politicians.

13 I think, at this point, that would conclude  
14 my remarks. If you have any questions, I would be happy  
15 to try to answer them.

16 MR. SCANLAN: In your judgment, would the  
17 unicameral system of Nebraska work just as well, better  
18 or worse, if you didn't have the nonpartisan aspect to  
19 it?

20 DR. WINSLOW: You ask a practicing politician  
21 that?





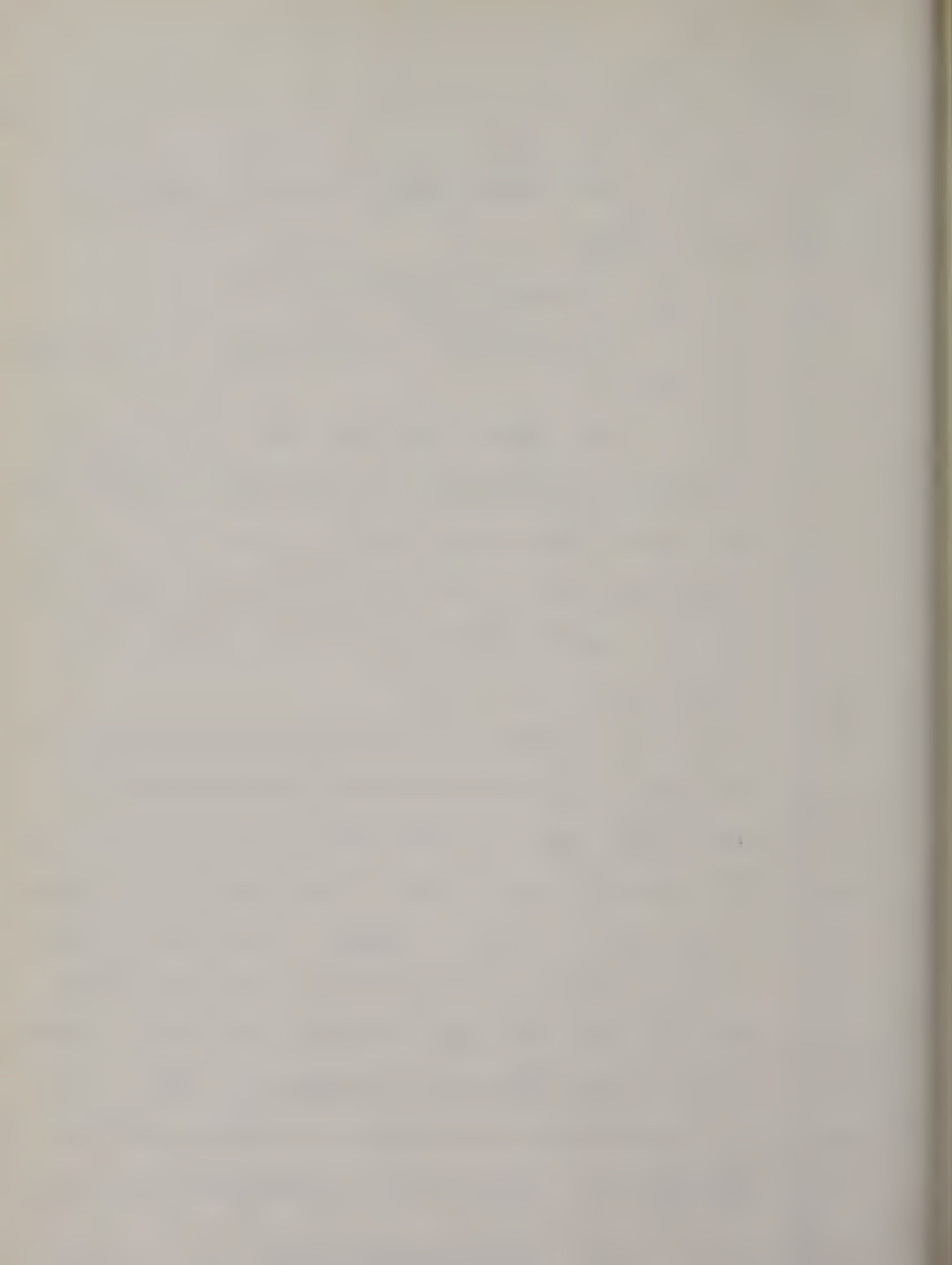
1 MR. SCANLAN: This is sort of confidential.  
2 Off the record.

3 (Discussion held off the record.)

4 THE CHAIRMAN: Dr. Graves, would you enlighten  
5 us on that?

6 DR. GRAVES: Of course, like most students of  
7 government, I am interested in this thing. I think there  
8 are only two legislatures that are elected on a so-called  
9 nonpartisan basis, in Nebraska and Minnesota, and if the  
10 gentleman over here had not raised the question, I was  
11 ready to do it, too.

12 I did have an opportunity for a few months, a  
13 few years ago, when the Minnesota Legislature was in  
14 session and I was a visiting member of the department at  
15 the university, to watch this thing, and nonpartisanship  
16 in Minnesota, I think, is largely a fake. All it means  
17 is that the names of the parties and the party emblems  
18 are not on the ballot, but everybody knows who the candi-  
19 dates are for, what party they belong to, that is, as  
20 any knowledgeable and informed person knows; and I have  
21 regarded it as just one of those things that we Americans



1 like to do, to kid ourselves. We just get a great kick  
2 out of it.

3 Of course, we have many cities that operate on  
4 this basis and the reason for it is basically that in the  
5 latter part of the last century and the early part of this,  
6 we had a lot of corrupt political machines in our states  
7 and in our cities, and a lot of people developed the notion  
8 that politics was a dirty business and that politicians  
9 are undesirable characters and no man in his right mind  
10 would want to be associated with them; all this bunk that  
11 we are still afflicted from the results of it. I think it  
12 is very unfortunate.

13 Oh, there are, sure, there are machines left,  
14 but they are not like the machines they used to have.  
15 They don't have the power they used to have. That is my  
16 reaction.

17 THE CHAIRMAN: May I ask you a quick question?  
18 Who does have the power structure there? I asked where  
19 was the power structure, since it does not lie within the  
20 political organization, which we are accustomed to here  
21 in Maryland and they had some difficulty actually



1 describing where it did lie. It was sort of evasive.

2 Would you care to comment briefly on where it does?

3 MR. KENTNER: I think I will be a bit evasive,  
4 too. I think there are a number of similarities on a num-  
5 ber of points which could be made about state legislatures  
6 in general, which I think would be perhaps largely true  
7 in Nebraska, which is to say that power depends upon the  
8 individual and the powerful individual will exercise that  
9 power, and I think this is simply true in Nebraska.

10 There are powerful individuals in the legisla-  
11 ture who exercise a great deal of influence in the legis-  
12 lature, just as there are in any legislature, and I would  
13 have a very difficult time defending the proposition that  
14 the power structure of the Nebraska legislature was sig-  
15 nificantly different than that in any other legislature.

16 MR. ENEY: Mr. Kentner, I would like to ask a  
17 question somewhat along the same lines, although the form  
18 of the question at least is different. With nonpartisan-  
19 ship, you lose the advantages, whatever they may be, of  
20 the two-party system. Does this result in a proliferation  
21 of parties or cliques in the legislature? Do you then end





1 up with a sort of a French system where you have an untold  
2 number?

3 MR. KENTNER: Well, my reply would be that I  
4 think there are cliques in untold numbers of parties in  
5 other legislatures.

6 MR. ENEY: Yes, except that they tend to act  
7 with some degree of unanimity on major policy matters, at  
8 least, the major matters that become policy matters for  
9 the party.

10 MR. KENTNER: I would think that it would be  
11 safe to say that there are sub-groups within the legisla-  
12 ture which form out of interest on the part of the legis-  
13 lators out of similar districts; so that the formation of  
14 blocks, although they are not labeled as such, do exist.

15 MR. ENEY: But you do not end up with so many  
16 diverse groups with different ideas on major legislation,  
17 that you have nothing accomplished?

18 MR. KENTNER: Well, I would say no.

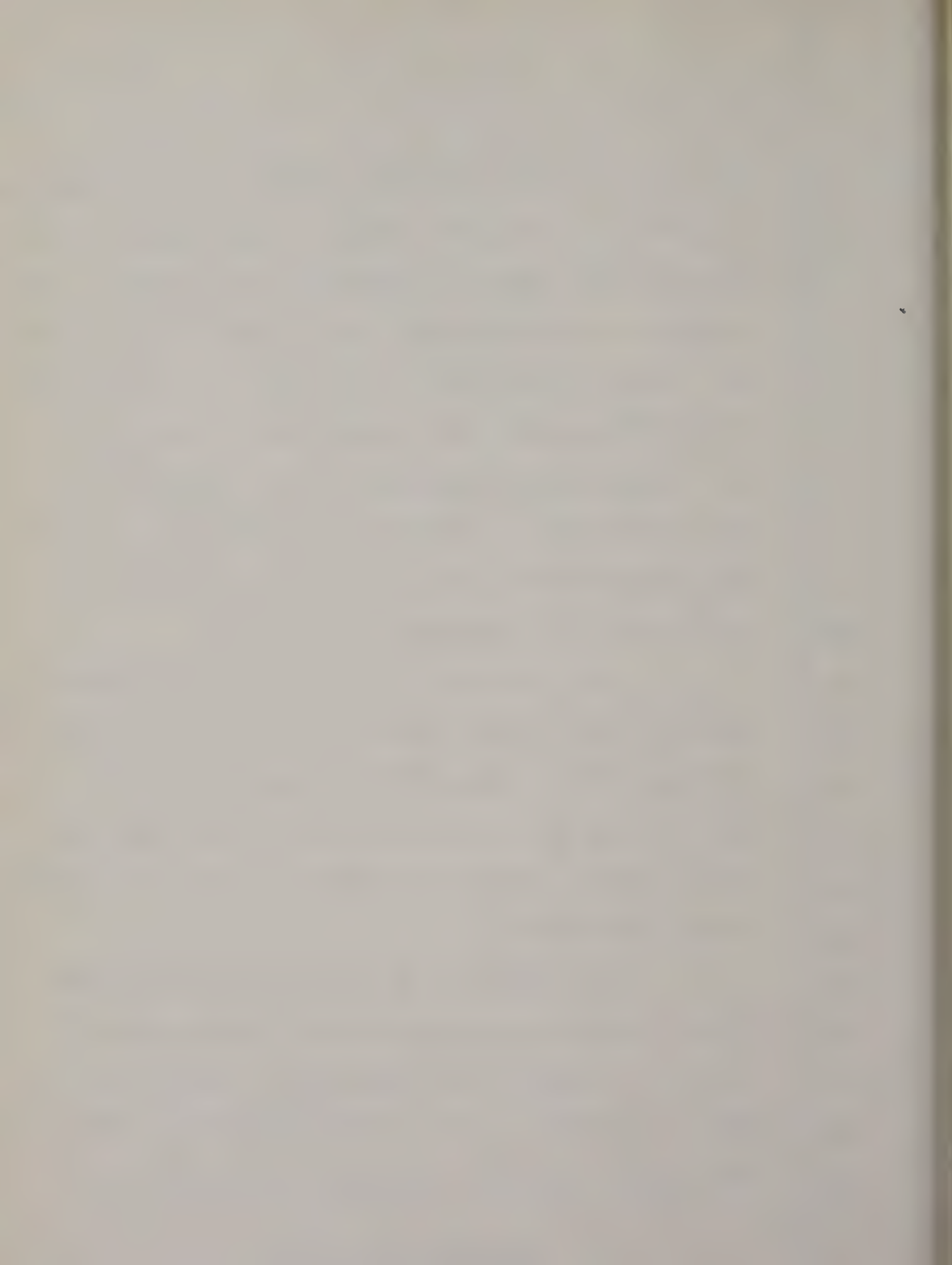
19 THE CHAIRMAN: There is one point, though, at  
20 least, this was hammered at me on numerous occasions, and  
21 that is that there is a cohesiveness that takes place and



1 some responsible group emerges, as holds true in a bicamer-  
2 al system or in any group living, for that matter; but the  
3 problem is the nature of continuing responsibility. Would  
4 you want to comment on that? By continuing responsibility,  
5 when you have partisanship as your basis, your Democratic  
6 and Republican party make pledges that are long-term as  
7 well as short-term in requirement and, therefore, they  
8 have to the public a continuing responsibility and, when  
9 election time comes, there is a way of facing how well  
10 they have met that continuing responsibility.

11 Now, I recognize that this may be in theory  
12 more often than it is in practice, but at least this is  
13 the theory of the responsibility of political parties.  
14 Who then holds the continuing responsibility, not just  
15 for one session, but over a number of sessions, for these  
16 cliques are ephemeral?

17 DR. WINSLOW: I am not so sure that statement  
18 is true, they are ephemeral, any more than it would be  
19 true they are ephemeral in Maryland. It seems to me, any  
20 careful observation of the Maryland legislatures indicates  
21 that, despite there is a short-out on major matters, you



1 may get uniform action, but the clique has already gotten  
2 in its activities at another stage. Certainly, the Demo-  
3 cratic party in Maryland has had its factions which have  
4 been able to control committee action where the chairman  
5 of a committee represents the interests of a particular  
6 area of the state.

7 So that you have geographical units here which  
8 have defied the action of the majority.

9 MR. SCANLAN: Well, I think that's true in  
10 intermittent matters, but I think Dr. Bard is right. In  
11 Maryland, the Governor and his leadership over a period of  
12 eight years, whether one agreed or disagreed with him,  
13 generally stood in the minds of the people as the people  
14 responsible for getting through a legislative program,  
15 and I am sure there have been rebellions both on the part  
16 of legislators in the General Assembly, or on the part of  
17 Democrats in other parts of the State, but there was no  
18 question there was one group we could look to for exer-  
19 cising, as you put it, continued responsibility over the  
20 term.

21 Now, how does Governor Morrison handle that out





1 in Nebraska? Does he have a leadership, and if Governor  
2 Morrison proposes a conflict of interest law, a reduction  
3 of taxes, reapportionment, this or that, what happens to  
4 it, and the program doesn't get through? Do the people  
5 hold Governor Morrison responsible, his leadership? Who  
6 is his leadership? That is what I think you were talking  
7 about, wasn't it, Harry?

8 THE CHAIRMAN: Yes. Even if it's a symbol, and  
9 we won't be able to pursue this too long because we want  
10 to get to our final speaker; but just a brief comment.

11 MR. KENTNER: I'm not quite sure how to answer  
12 the question. There is, to my knowledge, no group to which  
13 the Governor can look for undying loyalty to his program.  
14 I think that just simply doesn't exist, and I would further  
15 say that whatever groups he has are very factionalized  
16 and centered mainly around issues rather than around the  
17 philosophy.

18 THE CHAIRMAN: In other words, the knowledge-  
19 able people cannot tell really who are the Republicans or  
20 who are the Democrats, or can they?

21 MR. KENTNER: Off the record, please.



1 (Discussion held off the record.)

2 MR. SCANLAN: Would you say the dangers of  
3 parochialism submerging a program by the only official  
4 elected by an entire state are greater in the case of  
5 unicameral legislation on a nonpartisan basis, such as  
6 Nebraska, than they would be in a unicameral legislature  
7 that was elected on a partisan basis, or am I back to the  
8 question you went off the record on?

9 MR. KENTNER: Yes.

10 MR. SCANLAN: Your answer would be the same,  
11 then, if we were on the record?

12 MR. KENTNER: Yes.

13 MR. MINDEL: Before we leave that; were efforts  
14 made to go back to bicameralism in Nebraska and they all  
15 failed? Can you tell us what happened to those efforts?

16 MR. KENTNER: There have been no serious efforts,  
17 to my knowledge, to return. These were not serious, and  
18 I think in one of these reports Governor Morrison is  
19 quoted as saying unicameralism would win on the ballot by  
20 seventy-five per cent, and I think this is a fairly con-  
21 servative estimate.



1 MR. MINDEL: It is indicative that the people  
2 of Nebraska really like it, are willing to go along with  
3 it?

4 DR. WINSLOW: Or accept it.

5 MR. KENTNER: Yes.

6 MR. SCANLAN: When did Nebraska have its last  
7 constitutional convention, as such, roughly?

8 MR. KENTNER: I really wouldn't know.

9 DR. WINSLOW: It's been quite a while. They  
10 haven't had one recently, that I know of.

11 DR. WHEELER: I don't think in this century,  
12 probably.

13 MR. KENTNER: I think it goes back to the  
14 previous century, but I wouldn't --

15 THE CHAIRMAN: The mere fact that it is uni-  
16 cameral does not mean they are not having their problems  
17 with reapportionment. Let's remember, they are having the  
18 reapportionment problem like us. Well, let's get to  
19 Dr. Wheeler. We are going to give him fifteen minutes and  
20 we won't have any discussion after that, because three or  
21 four people stopped me and said they have to leave smack





1 at 2:00. So, please remain until he is through and we  
2 will pursue it next Wednesday.

3 DR. WHEELER: I will talk the full fifteen  
4 minutes and not have to defend myself?

5 THE CHAIRMAN: Right.

6 DR. WHEELER: I am going to be the college  
7 professor, which means I don't have to be either practical  
8 or interesting. I would like to say first, though, that I  
9 am not currently director of the state constitutional  
10 studies project. We brought out these things about five  
11 or six years ago. I've had no continuing contact with the  
12 program since then, although I recently went back on the  
13 program to review these publications. I say that to make  
14 clear I am not speaking for the National Municipal League.  
15 I don't think they will take umbrage to anything I'm going  
16 to say.

17 Actually, I'm more a partisan, generally, but  
18 I don't think we would differ on this business of uni-  
19 cameralism. I would like to mention a couple of points  
20 about theory and history and enter a couple of caveats  
21 here and probably end up with some very presumptuous



1 advice, since I can't be held to task for this.

2 First of all, I feel quite firmly and quite  
3 strongly that the burden of proof in this field, in this  
4 whole question, lies upon the defenders of the bicameral  
5 system. If, indeed, as Dr. Graves has said, that there is  
6 nothing you can do with a unicameral that you can't do with  
7 a bicameral, it seems to me the obvious conclusion you  
8 use the simpler system.

9 Now, the strategic question of whether you can  
10 get this kind of thing sold to the people or not is  
11 another one. I guess I'm a one-houser. I don't know, I  
12 don't like the term unicameralist, but I'm a one-houser,  
13 because mainly I can't find one thing that satisfies me  
14 as a reasonable defense for the bicameral system other  
15 than the political considerations. It is interesting, too,  
16 I think, as we go back in history far enough, we find that  
17 the two-house legislature preceded the development of the  
18 legislature function, if I'm not mistaken here; that this  
19 thing originated essentially because the churchmen and the  
20 nobles wouldn't sit with the knights and the commoners  
21 when the king wanted to raise money, and this is before



1 they had the power of legislation. Historically, we may  
2 have adopted some of our second houses as a way of getting  
3 more representation, but at least the theoretical argu-  
4 ments were at the time in terms of protecting ourselves  
5 against popular passions, which leads me to think there  
6 is still something to the first defense of bicameralism  
7 as a protection for the property classes, because politics  
8 is still a matter of taking from some people and giving to  
9 other people, and those that have are usually the ones  
10 that are not particularly interested in active government  
11 and those that don't have tend to be the driving force for  
12 governmental action in our time.

13 I think -- these are a lot of disjointed state-  
14 ments, but these have been building up as I have been  
15 listening to the previous comments. I think you are  
16 going to be terribly disappointed if you seek to find  
17 data, empirical data that will support or clearly differ-  
18 entiate these issues. I think you are going to end up  
19 having to make some kind of decision on this on the basis  
20 of perhaps theory.

21 When our government was set up, the dominant





1 political theory was one of restraining government, that  
2 is, we were fearful of government; government was not to  
3 be trusted, government was not to be active. It was to  
4 carry out police functions and leave everything else alone.

5 Now, we are in an era of very active government.  
6 We are demanding a great deal of government. If we are  
7 interested in a very strong and viable Federal system,  
8 then, in effect, we've got to figure out ways in which  
9 states can play a more important role and we've got to  
10 think of structuring our political institutions in a way  
11 that states can play this role.

12 Throughout American history there has been a  
13 problem of balanced constitutionalism against democracy.  
14 Constitutionalism means essentially placing restraints  
15 upon government and, in a democratic system, it means  
16 placing restraints upon the majority. So, we fashioned  
17 a number of things; separation of powers, the bicameral  
18 legislature, judicial review, all of these things to, in  
19 effect, restrict the majority.

20 So, the question arises, how many restraints  
21 do we want to place upon the majority? How effectively



1 do we want to restrain them? Someone once counted twenty-  
2 eight steps in the legislative process, I think, at the  
3 Federal level, anyway, and suggested if the majority  
4 wanted something, it had to control twenty-eight steps.  
5 The minority, the block action, only had to control one  
6 of these steps. This is a gross exaggeration, but I think  
7 it points out the principle I'm trying to make here.

8 I guess, if I can skip to the presumptuous  
9 advice and perhaps skip some of these other things that  
10 I would have referred to; one thing relates to a point in  
11 the most recent model state constitution that we brought  
12 out. In the sixth edition, for the first time we call for  
13 or make provisions for an alternative pattern for structur-  
14 ing the legislature. We said in effect that we will pro-  
15 vide an alternative provision for a bicameral legislature.

16 This is the first time the model has reflected  
17 any interest in the bicameral pattern. This was done not  
18 in terms of a shift in the A.M.L. traditional support for  
19 the unicameral legislature, but a feeling on the part of  
20 some of us that there wasn't a great deal of interest in  
21 this institution and, despite the fact we still believed



1 in it and would like some of the states to experiment with  
2 it, if we wanted to have an impact upon legislature  
3 structure, we ought to talk about what most state legis-  
4 latures have, the bicameral pattern, and that is why it  
5 finds its way into the footnote and does not reflect the  
6 change in the A.M.L. philosophy on this.

7 The second thing is if this Commission should  
8 adopt the unicameral legislature as a proposal or should  
9 adopt the bicameral legislature as a proposal, I think if  
10 it is going to make recommendations on the bicameral system,  
11 it should definitely make some strong recommendations as  
12 to the structure of that legislature.

13 In the model, we came out with a provision that  
14 we couldn't see any point in the upper house being more  
15 than about one-third the size of the lower house and we  
16 felt that if you were going to set up legislative districts,  
17 that the house districts couldn't in effect be put together  
18 then to conform with the senatorial districts, and there  
19 was no particular reason for tying these into twisting  
20 units of government which would or would not make any  
21 sense, as far as apportionment is concerned.





1           There was some discussion downstairs about not  
2 recommending the unicameral system because of strategic  
3 problems; and this is where I am getting presumptuous.  
4 If I view your role correctly, you are in effect making  
5 recommendations to a prospective constitutional convention.  
6 It would seem to me that you could very well, if you de-  
7 cide that this is something you want to try, you could  
8 make this recommendation strongly or include it as a pos-  
9 sibility, leaving it up to the convention to do what you  
10 know they are going to do, anyway, but that you start this  
11 process of what Mr. Eney has called the process of educating  
12 the people in the long run, and if the Commission were to  
13 give its endorsement to something of this kind, it at  
14 least makes it legitimate; where now it is nothing more  
15 than the brainchild of obscure college professors and the  
16 League of Women Voters.

17           One final thing, and this is an impression I  
18 have from studying the constitutional efforts in quite a  
19 number of states. Don't settle for less than you can get  
20 from the people. In Alaska, for example, I think I'm  
21 right on this, there was a good deal of sentiment, I



1 wouldn't say it was the majority sentiment, for a uni-  
2 cameral legislature; but the argument was raised, if we  
3 propose this thing, people are not going to adopt it and  
4 this will adversely affect other parts of the constitution.

5 I am not so sure. I mean, this is a matter of  
6 drawing a line that politicians are better able to draw  
7 than I am. My only experience in politics resulted in a  
8 two to one vote that I should remain a professor of  
9 politics. I say don't underestimate the people and don't  
10 settle for less than you can get from them.

11 I think reform is in the air. I think, as Dr.  
12 Graves has said, we have an opportunity now that we may  
13 not have again for a long, long time, to bring about some  
14 fundamental changes. I know in my own State of Virginia,  
15 we are undergoing really a revolution. Four years ago,  
16 the dominant philosophy was, in state government, we've  
17 got so much money, what can we do with it? This year, the  
18 theme is, we've got all these things we want to do; how  
19 are we going to raise the money to do it? And, in Virginia,  
20 this is a revolution, I think, Brooke, and I think the  
21 same kind of thing is taking place elsewhere.



1           There is a wave that can be taken advantage of  
2 if you want to bring about some fundamental reforms. That  
3 ends my sermon.

4           THE CHAIRMAN: You are going to get some ques-  
5 tions. Let me tell you how deeply appreciative we are,  
6 and I think we have brought four people here who are as  
7 knowledgeable as they are, and we will get Dr. Winslow  
8 on Wednesday, and for those who can stay, I hope they will,  
9 for some informal discussions, and perhaps we will be  
10 fortunate to bring them back. We have really erred in  
11 not setting more time aside for this important question.  
12 We were very fortunate to have Dr. Wheeler here. We have  
13 mentioned his works over and over again.

14           We have some time for a few questions and let's  
15 see if we can get some people who haven't said much.  
16 Sandy, you've been rather quiet today.

17           MR. HARVEY: What I would like to ask Dr.  
18 Wheeler is these other constitutions that the states have  
19 been working on recently, in the last ten years they must  
20 have grappled with this and I think every one of them  
21 came up with a bicameral system. Was there one single





1 thing that defeated unicameralism in those states or were  
2 there different reasons that they were voted down in the  
3 various states?

4 DR. WHEELER: I don't think unicameralism was  
5 seriously considered anywhere but Alaska, and they dis-  
6 posed of it rather quickly. There has been a resurgence  
7 of interest recently. For example, five years ago, I would  
8 have said yes, I'm for unicameralism, but I won't spend  
9 five minutes fighting for it. I'd rather fight for other  
10 things. Now, I think the situation has changed somewhat,  
11 so there is a basis -- I wouldn't say there is support for;  
12 I'd say there is more of a basis for building support for  
13 unicameralism. We've only had -- how many conventions  
14 since Baker?

15 MR. HARVEY: What did Connecticut do?

16 MR. BROOKS: They didn't consider that, I don't  
17 believe.

18 MR. SCANLAN: It's been raised in Connecticut  
19 and raised and rejected in the Rhode Island convention  
20 which is still in session and, of course, Baker v. Clark  
21 was decided in the middle of the convention. That didn't



1 show anything interesting because they were busy with that  
2 80-20 formula on reapportionment.

3 THE CHAIRMAN: Well, we really have finished  
4 right on the button and we have these people to thank.  
5 I know that this leads us directly into the two questions  
6 which we used as a basis for opening and that is where do  
7 we stand in connection with the subject and, secondly,  
8 irrespective of whether we hold one position as superior  
9 to the other as a committee, where do we stand in respect  
10 to whether we shall include both of these issues in the  
11 working papers; and here, as I understand it, we must  
12 submit this question to the Commission as a whole and it  
13 will be with this question that we shall open up  
14 Wednesday's meeting and then, hopefully, I guess through  
15 some other questions that we ought to submit, such as  
16 the one dealing with whether our reapportionment position  
17 be one of specifics, such as the constitution now includes,  
18 or will it be more in line with the kind of generalized,  
19 ceiling and floor position, with regard to representation,  
20 which the model includes.

21 Now, Dr. Winslow has some copies of his paper



1 which we might be fortunate enough to read before he starts  
2 with this next Wednesday. Could we have copies, Dr.  
3 Winslow?

4 DR. WINSLOW: I will give John a copy, and can  
5 you get some out for the members?

6 MR. BROOKS: Yes, sir.

7 DR. WINSLOW: I don't have enough.

8 MR. BROOKS: We will reproduce them and get  
9 them out.

10 THE CHAIRMAN: Just so we get them before the  
11 meeting, and I would urge you to read this for that meet-  
12 ing. Now, those of you who can stay on, and those of you  
13 who are with us today who can remain, we would appreciate  
14 that, too.

15 (Whereupon the formal meeting adjourned at  
16 2 p.m.)

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# ONE HOUSE OR TWO

(Comments by Dr. C. I. Winslow - February 16, 1966)

Now that the Supreme Court has decided that it is people not acres which are to be used as a basis for representation in both houses of state legislatures, the debate over bicameralism changes materially. Since the two houses can no longer be constructed to reflect differing interests or classes, the only strong argument for bicameralism which remains is that one house serves as a check upon the other. Undoubtedly, this is true -- to a degree. The question is whether it is a necessary, or even a desirable check, under current conditions.

What checks now exist to prevent legislatures from acting hastily and so enacting ill-considered legislation? To begin with, we have in Maryland a Legislative Council, whose business it is to give a preliminary examination to proposed legislation, especially in the more important areas of policy-making. In the house of origin, three further checks are provided: consideration by a standing committee, action by the house on the committee report,



1 and final passage. In the second house, three additional  
2 checks of the same nature appear. If changes are made in  
3 the second house, there is a further check in the house  
4 of origin and even in some cases by conference committee  
5 action.

6 Should the proposed legislation pass, there are other  
7 checks still available. The governor has a veto and the  
8 legislature a chance to reconsider and accept or override  
9 his action. Moreover, in most cases, the law is subject  
10 to popular referendum and to judicial review. If the  
11 pressures of public opinion and interest groups be added  
12 to all these, we have a formidable array of obstructions  
13 indeed.

14 How essential is it that all these checks be preserved?  
15 Specifically, how effective is the two-house system in  
16 preventing "hasty and ill-considered" legislation? Objective  
17 tests are difficult to apply. But there are some comparisons  
18 that can be made and some related data available -- enough  
19 to raise serious doubts as to the value of bicameralism as  
20 a desirable or necessary check to legislation. In a study  
21 of committee procedure in the Maryland General Assembly some



1 years ago, it was discovered that 35% of all Senate bills  
2 which passed the house of origin arrived in the House in the  
3 last seven (7) days of session (including Saturday and  
4 Sunday). The handling of 132 bills in so short a period  
5 doesn't give much time for serious consideration. Similarly,  
6 159 House bills (33.4% of all) had the same amount of time  
7 in the Senate.

8 In that same session, the second house killed 16.4% of  
9 all bills which came across the hall, and the governor vetoed  
10 12.6% of all bills reaching him. An examination of the  
11 governor's veto messages in the same session discloses that  
12 46.7% of his 92 vetoes were on grounds that the bills were  
13 unnecessary, unconstitutional, inconsistent with another  
14 passed at the same session, formerly repealed, vague, care-  
15 less, duplicating, ambiguous, etc., rather than on grounds  
16 of policy. If second house action were effective, the bulk  
17 of these nonpolicy vetoes would be unnecessary.

18 Immeasurable, but nevertheless important, is the appli-  
19 cation of the good old American policy of "passing the buck."  
20 That practice, combined with the frequently expressed "This  
21 bill was thoroughly considered in the other house. Let's





1 report it favorably" in the committee of the second house  
2 raises further question of the need for second house  
3 consideration. In fact, it seems quite probable that a  
4 properly organized and properly staffed single house, with  
5 responsibility fixed and with all the other checks provided  
6 in our legislative system, would be a better solution to  
7 the problem than a bicameral system.







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2  
3 CONSTITUTIONAL CONVENTION COMMISSION  
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7  
8 Meeting of Committee on Executive  
9 Department with Governor J. Millard Tawes  
10 was held on Thursday, February 24, 1966, at  
11 9:30 o'clock a.m., Eastern Standard Time,  
12 at Room 801, State Office Building, Baltimore,  
13 Maryland.  
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15  
16  
17  
18  
19

20 Reported by:  
21 M. Wasserman





1 COMMITTEE MEMBERS PRESENT:

2 Honorable E. Dale Adkins, Jr.,  
3 Chairman

4 Calhoun Bond, Esquire  
5 Mrs. Elsbeth Levy Bothe  
6 Charles Mindel, Esquire  
7 Mr. E. Phillip Sayre  
8 Honorable William Preston Lane, Jr.  
9 Mr. Garrett Power  
10 Ernest N. Cory, Jr., Esquire

11 ALSO PRESENT:

12 H. Vernon Eney, Esquire,  
13 Commission Chairman

14 John C. Brooks, Esquire,  
15 Executive Director of the Commission

16 Mrs. Maurice P. Freedlander  
17 Edward T. Miller, Esquire  
18 Dr. Harry Bard  
19 Mr. L. Mercer Smith

20 -----  
21 MR. ENEY: Ladies and Gentlemen, Governor

22 Tawes has another engagement at 10:30, so I would like to  
23 move forward.

24 As you know from the announcements which have  
25 been made, this is a public meeting of the Committee on  
26 Executive Department of the Constitutional Convention Com-



1 mission. The purpose of this particular meeting is to  
2 obtain the views of Governor Tawes, Mayor McKeldin, former  
3 Governor of Maryland, and former Governor Lane with res-  
4 spect to the provisions of the Constitution of Maryland  
5 pertaining particularly to the Executive Department of  
6 the State.

7 The Committee is headed by former Judge E. Dale  
8 Adkins of Salisbury as Chairman, and he will preside at  
9 this meeting. Judge Adkins.

10 JUDGE ADKINS: Thank you. Governor, we appre-  
11 ciate your taking time from your busy schedule to be with  
12 us to give us some guidance.

13 We would be happy if you have a statement to  
14 make to let you just make the statement in your own way,  
15 and then we would like to have the right to ask you a few  
16 questions.

17 GOVERNOR TAWES: Judge, I have no prepared  
18 statement except to say that I am delighted to be here  
19 and appreciated the invitation to come to pass on to you  
20 any views that I might have in answer to any questions  
21 that the Committee here might have to present to me.



1 JUDGE ADKINS: Fine. Well, we have provided  
2 you with a list of questions of matters that are under  
3 consideration by our Committee, and I think we would be  
4 happy to have you comment on any or all of those questions  
5 that you feel you would like to comment on. We are, for  
6 example, interested in whether or not you feel that the  
7 two-term limitation should be continued.

8 GOVERNOR TAWES: Yes. Well, my answer to that  
9 would be Yes. I think the two consecutive term limita-  
10 tion should be continued. I think four years is too lit-  
11 tle, too short a time for a governor to properly put  
12 through his entire program that he anticipates putting  
13 through when he assumes office.

14 Many states throughout the nation have two-year  
15 terms with no limit to the number of terms a governor may  
16 succeed himself. Many of them have a limit of one four-  
17 year term and in discussion these limitations of one four-  
18 year term with governors throughout the South, particularly  
19 where this exists, they feel that four years is just too  
20 short a time.

21 Now, in Texas, Governor Connolly had a con-





1       stitutional amendment on the ballot in November increasing  
2       the two-year term down there to a four-year term, but it  
3       was defeated by the people. So I would say the two conse-  
4       cutive terms should be continued.

5               JUDGE ADKINS: You would not favor going to  
6       three consecutive terms or removing the limitation on the  
7       number of terms?

8               GOVERNOR TAWES: No, I think eight years --

9               JUDGE ADKINS: Eight years is long enough?

10              GOVERNOR TAWES: -- for any governor is suf-  
11       ficient time to complete any program that he wishes to  
12       leave as a memorial or as a remembrance of his administra-  
13       tion.

14              JUDGE ADKINS: All right, sir. Another of the  
15       major problems we are concerned with is the extent to  
16       which the other two Statewide elected officers -- well,  
17       whether or not they should be continued to be elected, or  
18       whether you feel that they should, either of them, be  
19       appointed.

20              GOVERNOR TAWES: You are referring to the Comp-  
21       troller and the Attorney General?



1 JUDGE ADKINS: Yes, sir. Is there any reason  
2 to have them appointed?

3 GOVERNOR TAWES: Well, I would say that the  
4 Governor should appoint the Comptroller and the Attorney  
5 General. Now, these two officials are pretty close to the  
6 Administration headed by the Governor.

7 For instance, the Comptroller is his finance  
8 officer, the chief fiscal officer of the State, and operat-  
9 ing under a \$875 million budget, I think the Governor, who  
10 is responsible for the budgetary program and the spending  
11 program of the State, should have a Comptroller with whom  
12 he can work very closely without any fear of reprisal.  
13 The Comptroller, if he is elected, naturally, he feels  
14 that he is responsible to the people, the people that  
15 elected him. I would say that the Comptroller, by all  
16 means, should be appointed by the Governor.

17 The Attorney General, I don't have the same  
18 reservation as I would have for the office of Comptroller.

19 JUDGE ADKINS: Do I understand, then, that you  
20 are suggesting that the Attorney General perhaps could  
21 continue to be elected as he now is?



1 GOVERNOR TAWES: Yes.

2 JUDGE ADKINS: Well, what would be your views  
3 relative to the State Treasurer, do you feel that is a  
4 cumbersome --

5 GOVERNOR TAWES: I think the State Treasurer  
6 should be appointed by the Governor, maybe with the advice  
7 and consent of the Senate.

8 JUDGE ADKINS: But not like it now is, by the  
9 Legislature in combined session?

10 GOVERNOR TAWES: Not the Legislature.

11 JUDGE ADKINS: All right, sir. I think one of  
12 the major problems that is going to concern us, Governor  
13 Tawes, is the extent to which we will go in recommending  
14 what we on the Committee are calling a strong type execu-  
15 tive. By that we don't mean any single individual, but  
16 we mean the concentration of power in the hands of the  
17 Governor as opposed to having it disbursed to boards and as  
18 it now is. Do you have any feeling that the office of  
19 Governor would be improved if more power were vested in  
20 the Governor as opposed to having it disbursed through  
21 boards, as it presently is?





1 GOVERNOR TAWES: Definitely, I think it would  
2 be more effective if more power was placed in the hands  
3 of the executive.

4 JUDGE ADKINS: Would you, for example, favor  
5 having such jobs as the Superintendent of Schools, the  
6 Superintendent of Forests and Parks directly responsible  
7 to the Chief Executive instead of responsible to a par-  
8 ticular board as they now are?

9 GOVERNOR TAWES: Yes, I would. For instance,  
10 now, the Executive Director of Forests and Parks is direct-  
11 ly responsible to the Governor, the Governor appoints him.

12 Now, that law was changed just two or three  
13 years ago.

14 JUDGE ADKINS: It was changed?

15 GOVERNOR TAWES: Yes.

16 JUDGE ADKINS: Do you feel that there is any  
17 impediment to your proper carrying out of your programs  
18 in having to work with boards which have staggered terms,  
19 as, for example, the Board of Education?

20 GOVERNOR TAWES: No, there hasn't been any  
21 real problem in that area, in that particular area.



1           Where you get your problems is where a board  
2 had the power of establishing policies and so on, a board,  
3 and then you have a director of the organization, and that  
4 is being changed gradually.

5           For instance, in the Department of Correction,  
6 formerly the Commission of Correction, had the power to  
7 establish policy and had great powers, and the law was  
8 changed not long ago, and it is an advisory board, strictly  
9 an advisory board now with the Commissioner of Correction  
10 as the acting head of the department, of the operations in  
11 our penal institutions, and that is gradually being done,  
12 and I think it should be more widespread.

13           When you move into these areas, you get  
14 violent opposition to changing the area. Calhoun Bond is  
15 looking at me, but you get violent opposition to changing  
16 it from a policymaking board to an advisory board, and the  
17 executive is handicapped to some extent in administering the  
18 responsibilities of his office in those particular areas  
19 when that particular situation exists.

20           JUDGE ADKINS: You feel then that more boards  
21 should be advisory?



1 GOVERNOR TAWES: More advisory rather than  
2 policymaking.

3 JUDGE ADKINS: Rather than policymaking.

4 GOVERNOR TAWES: Yes, it certainly does handi-  
5 cap the executive.

6 JUDGE ADKINS: And that the personnel respon-  
7 sible to the board would then be responsible directly to  
8 the Chief Executive rather than responsible to the board  
9 itself?

10 GOVERNOR TAWES: That's right, to the Executive  
11 Director.

12 JUDGE ADKINS: Are there any other ares in  
13 the State Government of that similar nature on which you  
14 would care to comment?

15 GOVERNOR TAWES: No, not offhand.

16 JUDGE ADKINS: Any specific departments?

17 GOVERNOR TAWES: Not offhand, no. I didn't --  
18 as a matter of fact, Judge, I was handed some questions  
19 that you were going to ask, and I only came prepared to  
20 answer the questions, to give my views on the questions,  
21 and you are departing from that, so, consequently --





1 JUDGE ADKINS: Well, I apologize.

2 GOVERNOR TAWES: -- I am not prepared to go  
3 into a long dissertation on these other areas.

4 JUDGE ADKINS: All right.

5 GOVERNOR TAWES: I could, but it would take a  
6 lot of time.

7 JUDGE ADKINS: Well, suppose we then limit  
8 ourselves strictly to these questions, and maybe that will  
9 be a little more orderly.

10 The second question on our list here, should  
11 the Constitution provide for a method of succession to  
12 the governorship in the event of physical or mental in-  
13 capacity of the Chief Executive?

14 GOVERNOR TAWES: Oh, yes, definitely, and we  
15 do have a method of succession now. As you know, it is  
16 the Governor, the President of the Senate, the Speaker of  
17 the House, the State Treasurer, Comptroller and so on down  
18 the line, but definitely I think if the Governor becomes  
19 incapacitated, that constitutes another problem.

20 When the Governor leaves the country -- when  
21 the Governor leaves the State, rather, and the Governor is



1 very ill, there is no provision in the Constitution pro-  
2 vided for anyone to carry on.

3 The way we carry on, I leave my -- I take my  
4 top executive assistant, and he carries on while I am ab-  
5 sent, and Edmund C. Mester on my staff, he has the author-  
6 ity to carry on, but there should be someone, maybe a  
7 lieutenant governor, or someone to carry on when the  
8 Governor leaves the State.

9 Now, I go to Europe with Dr. Elkins occasion-  
10 ally to our overseas college, and if a very, very acute  
11 emergency arose, they would have to call me in Europe,  
12 locate me. I have to let them know where I am all the time,  
13 how they can reach me. It is difficult, it is a little  
14 bit of a trying situation when you are away for six or  
15 eight days, and you are out of the country. I mean, I think  
16 that loophole should be closed so that when the Governor  
17 leaves the State even, that there should be someone to  
18 assume the responsibilities of the office.

19 JUDGE ADKINS: Would you assign him any con-  
20 stitutional duties other than succeeding to the governor-  
21 ship when he became incapacitated?



1           GOVERNOR TAWES: No, I don't believe he should  
2 be given the same powers as the Governor has. No, I think,  
3 though, that he should be able to sit in on the various  
4 meetings and make minor policy decisions in the absence of  
5 the Governor and so on, and then I think someone of that  
6 nature would be -- we are living now in a State with over  
7 3½ million people and the demands on the Governor are great  
8 to attend functions all over the State. Well, I have to  
9 pick someone wherever I can, I don't have an assistant  
10 governor, so to speak, a lieutenant governor, to send to  
11 represent me at various dinners and functions, and so on,  
12 and the invitations run anywhere from fifteen to twenty-  
13 five a day, and we try to find different individuals, maybe  
14 the Attorney General, maybe the Comptroller, maybe the  
15 President of the Senate, or the Speaker of the House, we  
16 call on them and ask them if they will represent the  
17 Governor at some function where we think representation of  
18 the Executive should be, so that's the way we operate now,  
19 but then there should be some tightening up of that loose  
20 policy.

21           MR. SAYRE: Governor, on the succession, if





1 you had a lieutenant governor, would you have him like the  
2 Vice-President is with the President on the same ticket,  
3 or would he be independent; how would you have a lieutenant  
4 governor?

5 GOVERNOR TAWES: Well, you know many states  
6 have a lieutenant governor, and many, many states through-  
7 out the nation. They are elected, and they are elected  
8 by the people. It all depends on what the system is.

9 In Maryland, we in our political campaigns,  
10 we have what we refer to as tickets headed by the Governor,  
11 or the United States Senator as the case may be.

12 MR. SAYRE: Well, wouldn't the ticket --

13 GOVERNOR TAWES: The chances are that that  
14 particular position would become a part of a ticket of a  
15 group of people running together.

16 JUDGE ADKINS: At any time any of the other  
17 members of the Committee want to interject questions, please  
18 do so, I don't want this to be a one-man performance here.

19 Governor, the next question that we have asked  
20 you to consider is whether you believe that the election  
21 of State officials should be moved to odd-numbered years



1 when no Federal officials are elected.

2 GOVERNOR TAWES: No, I would not recommend  
3 that.

4 JUDGE ADKINS: You would see no reason to  
5 change?

6 GOVERNOR TAWES: No, I see no reason to change.

7 JUDGE ADKINS: Should the Governor take office  
8 sooner than the fourth Wednesday in January so that he  
9 can assume responsibility for budget preparation for the  
10 next legislative session?

11 GOVERNOR TAWES: There is absolutely no need  
12 for that. I would recommend that the Governor take office  
13 in January as the Constitution now provides.

14 There may be some feeling that if a governor  
15 takes office sooner, he would have more time to present  
16 his budget, and prepare his budget, but Governor Lane, I  
17 think, will understand that when a governor is going out  
18 of office and a new governor is coming in, the retiring  
19 governor has worked on the budget up to that time. The  
20 budget making starts in July of each year.

21 Now, when we know that there is a new Governor



1 to take office, the next day I shall call him and tell  
2 him, Now, the budget has been moving up to this point,  
3 but from now on, you are the newly elected Governor, the  
4 budget process is yours, and he will take over as I did  
5 in 1958, and there is no need.

6 I would certainly recommend that the inaugura-  
7 tion of the Governor should not be changed. I don't see  
8 any need for it, no need of it.

9 JUDGE ADKINS: All right.

10 MR. ENEY: Judge Adkins, could we go back to  
11 the question of the lieutenant governor a moment?

12 JUDGE ADKINS: Sure.

13 MR. ENEY: Governor Tawes, I think the ques-  
14 tion that Mr. Sayre was asking was whether the Constitution  
15 should require, in other words, make it a must that the  
16 lieutenant governor and the Governor be of the same party  
17 and be elected together rather than merely run on the same  
18 ticket.

19 GOVERNOR TAWES: Well, I don't think that is  
20 always the case in other states. I have known of governors  
21 being of one political party and the lieutenant governor





1 another.

2 MR. ENEY: Well, do you think that would de-  
3 sirable here if you had a lieutenant governor act for the  
4 Governor in a temporary absence of the Governor?

5 GOVERNOR TAWES: You have it here in the City  
6 of Baltimore, you have a Republican mayor, and when he  
7 leaves town the Democratic President of the City Council  
8 takes over. I don't see any conflict there unless you are  
9 going to have someone when the Governor leaves that he is  
10 going to take over and fire everybody and establish his own  
11 government for two or three days. I don't think that would  
12 happen.

13 JUDGE ADKINS: In which event, the Governor  
14 wouldn't leave very often.

15 GOVERNOR TAWES: What?

16 JUDGE ADKINS: In which event, the Governor  
17 wouldn't leave very often.

18 GOVERNOR TAWES: Yes, right. Well now, that  
19 happened to a very good friend of mine who is the Governor  
20 of one of the States, Governor Lane, at the Southern  
21 Governors Conference, he couldn't come so some of his col-



1 leagues came instead and said, Well, the Governor has got  
2 to stay home, there is some legislation before the General  
3 Assembly and the lieutenant governor is there, and he is  
4 afraid to leave him by himself, so you get that every once  
5 in a while, but I would not limit it that the lieutenant  
6 governor must be of the same political party of the  
7 Governor, no, I don't see the need of that.

8 MR. ENEY: Would you provide in the Constitution  
9 that the lieutenant governor, if we had one, be a member  
10 of important boards, such as the Board of Public Works?

11 GOVERNOR TAWES: No, no, not the lieutenant  
12 governor, no. I think he should preside over the Senate  
13 as most lieutenant governors do.

14 JUDGE ADKINS: You would make him the President  
15 of the Senate?

16 GOVERNOR TAWES: Yes.

17 JUDGE ADKINS: Are there any other questions  
18 by any members of the Committee, while we are on that sub-  
19 ject?

20 MR. MILLER: Dale, if I might, I would like to  
21 ask the Governor to amplify it a little further. Would you



1. have any objection if it was -- is there any objection  
2 to having the Governor and lieutenant governor on one  
3 line requiring only one lever on a ballot that is already  
4 overloaded; would you have any objection to that?

5 GOVERNOR TAWES: No, I wouldn't. We have that  
6 in the Presidential election, don't we?

7 MR. MILLER: That's right.

8 GOVERNOR TAWES: No, I would have no objection  
9 to it.

10 MR. MILLER: And it would assure, would it not,  
11 a better team than if they were picked at random?

12 GOVERNOR TAWES: Maybe so. I would have no  
13 objection just so the office of lieutenant governor was  
14 established so as to relieve some of the rather difficult  
15 assignments the Governor is called upon from time to time  
16 to fulfill, and at the same time, the lieutenant governor  
17 could be very, very valuable, I think, in the State now.  
18 Under circumstances fifteen or twenty years ago, maybe we  
19 didn't need it.

20 I circulated a questionnaire on one occasion  
21 on this question of lieutenant governor. This was probably





1 about ten years ago, and the answers were about evenly  
2 divided, and the Legislature tried to put through a bill,  
3 and it was defeated in the Legislature.

4 Now, you see, we can talk about these things,  
5 but it must be, all these things must be approved.

6 JUDGE ADKINS: Doctor.

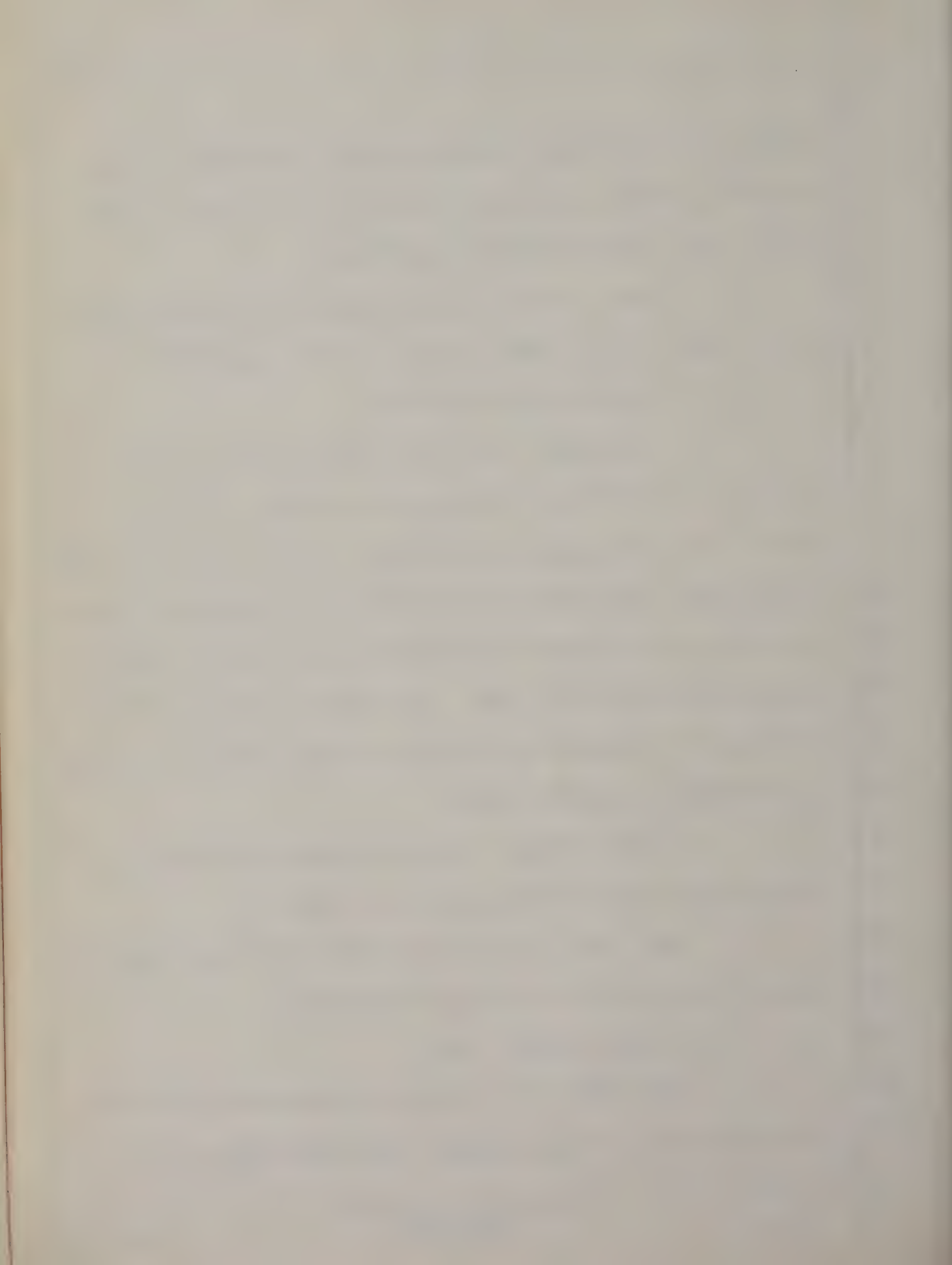
7 DR. BARD: Under the Constitution of 1864,  
8 Governor, we did have a lieutenant governor, but that  
9 didn't last very long, as you know, it was just three years,  
10 so that our experiences in Maryland with lieutenant gover-  
11 nors were sort of tied in with the Constitution which it-  
12 self did not last too long. That may be a problem in re-  
13 creating it, although it has been so long ago that I doubt  
14 if the problem would be there.

15 JUDGE ADKINS: Well, assuming there are no  
16 further questions on that subject, I have --

17 MR. ENEY: May we go back and ask one question  
18 about a first subject that was mentioned?

19 JUDGE ADKINS: Sure.

20 MR. ENEY: You commented, Governor, that you  
21 would have the Governor appoint both the Comptroller of



1 the State and the Treasurer. Would you change, then, the  
2 composition of the Board of Public Works, or would you  
3 leave it with the Governor, the Comptroller and the  
4 Treasurer?

5 GOVERNOR TAWES: Well, I think the Board of Public  
6 Works of the State now should be reorganized, and I hope  
7 the Constitution might provide for that.

8 MR. ENEY: How would you reorganize it?

9 GOVERNOR TAWES: Well, we are now being bur-  
10 dened with so many trivial matters that come before the  
11 Board. The membership of the Board could well be established  
12 with a three-member Board. I think maybe that the legis-  
13 lative branch of the government should be represented on  
14 the Board of Public Works as a minority member, and then I  
15 think either the State Treasurer, or the State Comptroller,  
16 or the Attorney General might be the third member; I am  
17 not sold on which of the three, and then the responsibilities  
18 of the Board of Public Works, I think, have reached a time  
19 now -- for instance, the Board of Public Works met last  
20 Friday, a week ago tomorrow, we started at 10 o'clock in  
21 the morning, and we didn't finish the work of the Board



1     until 4 o'clock in the afternoon, and then all of the busi-  
2     ness had not been transacted, and that's a long time for  
3     the Board of Public Works to meet. We are thinking now  
4     of having two meetings a month, but I remember back in the  
5     early Forties and the early Fifties a Board of Public  
6     Works meeting lasted maybe an hour, an hour and a half,  
7     or two hours, but six hours it requires now to dispose of  
8     the work of the Board of Public Works, and a lot of it is  
9     trivial matters that should not come before the Board of  
10    Public Works. I don't know, I don't have a concrete plan  
11    to submit to you, I could do it, but I didn't come with  
12    any concrete plan, but my experience on the Board of Pub-  
13    lic Works, I have been on the Board since 1938 with an  
14    exception of maybe about three and a half years -- 1939,  
15    I have been a member of the Board of Public Works, and  
16    that experience leads me to say that there should be some  
17    reorganization of the Board of Public Works.

18           JUDGE ADKINS: You do feel that --

19           GOVERNOR TAWES: Now, I do not have a concrete  
20    plan to propose at this time. I am just saying it needs  
21    reorganizing.





1 JUDGE ADKINS: You do feel there is reason  
2 to have a Board of Public Works?

3 GOVERNOR TAWES: Oh, yes.

4 JUDGE ADKINS: As a coordinating body.

5 GOVERNOR TAWES: Yes, I do.

6 JUDGE ADKINS: Well, I think we would like to  
7 ask, if it is within my right to do so, if you would be  
8 good enough to give us any suggestions after this.

9 GOVERNOR TAWES: I would be glad to do it.

10 JUDGE ADKINS: In writing or any other way you  
11 care to do it. I think we would like very much to have  
12 the benefit of your judgment in that field.

13 GOVERNOR TAWES: I might say at this point, and  
14 I have asked the people, I have been discussing this mat-  
15 ter with a few of our states in the nation which have been  
16 having studies made on the subject of the reorganization  
17 of the Executive Department, and some time ago we initiated  
18 an idea of that, and we have been working on it, and as  
19 a matter of fact, they are going to, because we don't want  
20 the reorganization of the Executive Department to get con-  
21 fused with your Commission here on the writing, and I have



1 asked them to confer with you. The Commission hasn't been  
2 appointed yet. We are getting the groundwork laid for it.

3 The Executive Department should be, I think,  
4 reorganized. We just received a report from one of the  
5 states, a heavy report, and we went over it just a few days  
6 ago, and I think some of the states are beginning to realize  
7 that with the modern techniques, the data processing and  
8 all of these things that are coming into being, that you  
9 need some revamping of the organizational structure of the  
10 Executive Department in order to pursue these new problems  
11 effectively.

12 JUDGE ADKINS: This is a matter that could be  
13 done probably by legislation without the necessity of con-  
14 stitutional --

15 GOVERNOR TAWES: Yes, I think most of it could  
16 be by executive and by legislative action, but we don't  
17 want to get into conflict with your work here.

18 MR. SAYRE: Governor, to what extent should  
19 the Governor have the power to reorganize, and what would  
20 you suggest the Legislature have reserved to it under the  
21 Constitution for reorganization?



1           GOVERNOR TAWES: I don't believe I understand  
2 your question.

3           MR. SAYRE: Well, let's say that you decided to  
4 reduce all activities in the executive branch to fifteen  
5 departments or agencies, let's just say. Do you believe  
6 you should have that authority to institute this reorganiza-  
7 tion, and what limitations should the legislative branch  
8 have upon your ability to do this?

9           GOVERNOR TAWES: Well, I think the Legislature  
10 probably would sort of frown on that kind of widespread  
11 authority, and I wouldn't ask for that kind of authority  
12 if I were Governor. However, there are many areas of over-  
13 lapping agencies, and we are trying to cure some of those  
14 things under the Board of Natural Resources, Water Manage-  
15 ment, and things of that kind, we are trying to gradually  
16 overcome and eliminate the overlapping of responsibilities  
17 in certain areas. Now, the Legislature can do these things,  
18 but we are doing it piecemeal, a little here and a little  
19 there, and before you get one area cured, probably some-  
20 thing else breaks out that gives you trouble. In the area  
21 of Welfare, you have many facets of Welfare today, I mean





1 different areas of Welfare.

2 I have no specific recommendations on that.  
3 Calhoun Bond here is a member of the Welfare Board, but  
4 I think the Executive Department in Maryland needs study-  
5 ing, and I don't think it needs constitutional provisions  
6 to provide the new plan, I think it can be through execu-  
7 tive order and through legislative action.

8 Now, that is the reason we are going into it.  
9 I think that we should have a plan for the next Adminis-  
10 tration made by a competent study commission with expert  
11 and professional consultants studying our executive setup,  
12 and then at the next session of the General Assembly, if  
13 the new Governor wishes to inaugurate some of these pro-  
14 posals, fine, and he will have it to do. When a new  
15 governor comes in, he should be the one who I think should  
16 inaugurate a system of this kind.

17 MR. SAYRE: How broad would you think the  
18 executive order should be?

19 GOVERNOR TAWES: That all depends on our con-  
20 sultants, what the Commission and what the consultants  
21 think this should be.



1           MR. BOND: Governor Tawes, what we have been  
2 talking about on this line in the subcommittee is that  
3 the Governor should have control of the State Government.  
4 He shouldn't have a board controlling the department and  
5 have to wait six years in order to get control of the  
6 board in order to have his ideas implemented within the  
7 department. I think we agree on that.

8           There is also some discussion that various  
9 boards connected with the departments should become ad-  
10 visory and the directors become members of the Governor's  
11 cabinet, so to speak, so that the Governor would have a  
12 cabinet-type of administration with advisory boards.

13           What has been of concern to some of us is in  
14 the event of a change of administration an incoming governor  
15 would then have the power to sweep out all the top heads of  
16 his departments, and this is of some concern, and I just  
17 wonder if you have any comments on this?

18           GOVERNOR TAWES: I can't conceive of a new  
19 governor coming in and sweeping out all the department  
20 heads, and when I came into office, I evaluated the depart-  
21 ment heads, and I think we have practically every depart-



1       ment head from when I came into office with the exception  
2       of those who have retired or who have died and left a  
3       vacancy, but I followed eight years of a Republican adminis-  
4       tration, and I have not found it necessary, and I don't  
5       recall a case where I found it necessary to be unhappy  
6       about the department head.

7               MR. BOND: May I ask you another question,  
8       would you limit this power of the Governor's appointments  
9       to just the head of the departments and let all the sub-  
10      heads and the various heads of divisions within the depart-  
11      ment have tenure and be members of the merit system?

12             GOVERNOR TAWES: Well, not all of them, I  
13      wouldn't say in every instance. I think where you have in  
14      the correctional institutions the wardens, I don't think  
15      they should be under the merit system, but I think the  
16      department head should have the right to appoint those per-  
17      sons. Maybe they could have tenure, I don't know, but I  
18      don't think they should be merit system employees. I mean  
19      I am speaking of positions of that kind, but I think the  
20      department head should have the authority to operate his  
21      department as he deems necessary, and expedient and proper.





1           MR. BOND: And you think there should be a  
2 channel from the Governor to the department head and not  
3 impeded by a board?

4           GOVERNOR TAWES: That's right. We have had  
5 two or three very good examples of that.

6           MR. BOND: Yes, sir, I know.

7           GOVERNOR TAWES: In my seven years, we have  
8 some examples of these people. These persons have even-  
9 tually left the service.

10          JUDGE ADKINS: Passing on to right down this  
11 list of prepared questions --

12          GOVERNOR TAWES: All right, I would like to do  
13 that if you don't mind, because I am running out of time.

14          JUDGE ADKINS: We have answered several of  
15 the next ones, and there are a couple of points that we  
16 do want to be sure we get your views on. Do you believe  
17 that your appointments or any portion of them should be  
18 subject to the advice and consent of the Senate?

19          GOVERNOR TAWES: No, I don't, I don't think  
20 so. I think that is a way to close the way a governor  
21 can get top efficient personnel. You have politics. I



1 know that I have had problems in getting, well, some ap-  
2 pointments through. For instance, the Baltimore City  
3 Liquor Board. We have a good Liquor Board, I think, in  
4 Baltimore City, the reports that I get are very, very good,  
5 and they are efficient and attentive to duties. I sent  
6 all three names to the Legislature for Senate confirmation.  
7 The Chairman of the Committee advised me that they are  
8 going to be knocked off. You know what that means, don't  
9 you? I had to withdraw those names.

10 I remember on one occasion, we created a new  
11 body, and two of three of the senators came up to my of-  
12 fice. I have no quarrel with the Senate of Maryland, I  
13 never have had any quarrel with the senators as a whole,  
14 but I think when the Governor is responsible for the ap-  
15 pointment of a department head to direct the department,  
16 and the department head is responsible to the Governor,  
17 that confirmation of the Senate impedes the real method  
18 of appointment.

19 JUDGE ADKINS: You would extend that even to  
20 the so-called current Green Bag appointments?

21 GOVERNOR TAWES: Most of them, yes, most of



1       them.

2               JUDGE ADKINS: In other words, you would re-  
3       move the necessity there for consent of the Senate?

4               GOVERNOR TAWES: I think there are some excep-  
5       tions, Judge, I think there are some exceptions that I  
6       would be willing to go along with, but when you are appoint-  
7       ing a head of a large department, a large agency of the  
8       State, to subject him to the will of the Senate, I don't  
9       think is right and proper in present day governmental  
10      operation and administration.

11              JUDGE ADKINS: Let me then ask this next ques-  
12      tion. Do you feel that the Chief Executive's office has  
13      sufficient powers to function as the preparer of the bud-  
14      get? Do you have all the authority --

15              GOVERNOR TAWES: Oh, yes.

16              JUDGE ADKINS: -- and functions that you need  
17      now?

18              GOVERNOR TAWES: Oh, yes.

19              JUDGE ADKINS: To prepare the State budget?

20              GOVERNOR TAWES: Oh, yes, we do.

21              JUDGE ADKINS: You would have no suggestions





1 to make as to that?

2 GOVERNOR TAWES: There are no limitations.  
3 It is the Governor's sole responsibility and there are no  
4 limitations at all.

5 The departments are requested to submit the  
6 requests for funds to operate the department for the en-  
7 suing fiscal year, and the Governor has the right to review  
8 those requests and adjust them accordingly.

9 JUDGE ADKINS: Does anybody have any questions  
10 on that subject, that's one that we discussed.

11 MR. BOND: Governor, one thing that has been  
12 concerning us, do you feel that the present way of prepar-  
13 ing the budget and having the budget of the State the  
14 Governor's budget, the best way for fiscal responsibility?  
15 I think the answer is obvious, but this is something we  
16 are concerned with.

17 GOVERNOR TAWES: Yes, I think the present bud-  
18 get is exactly the way the spending program of the State  
19 should be handled. I think it is the Governor's respon-  
20 sibility for the fiscal integrity, the fiscal stability  
21 of the State, and if he doesn't have the control over the



1 spending program, the whole system could get out of bal-  
2 ance.

3 MR. BOND: He does not in many other states,  
4 as you know.

5 GOVERNOR TAWES: Well, that's true.

6 MR. BOND: And we think, I mean I think we  
7 agree with you, but this has been of concern to us.

8 GOVERNOR TAWES: I think we have a good budget-  
9 ary system in Maryland. I think it has been shown time  
10 and time again that the State doesn't go wild on a spending  
11 spree unless the Governor permits it, and the Governor  
12 submits his budget to the General Assembly, they can't in-  
13 crease it, they can reduce it, but they can't increase it,  
14 and it has been my policy in certain areas when the Legis-  
15 lature wants to add<sup>to</sup>/the capital improvement budget, you  
16 know, certain funds which haven't been cleared through our  
17 Planning Department and do not have the approval of the  
18 Executive Department, it is generally known that we veto  
19 those items on a line veto method. We just don't think we  
20 could let it get a hold -- we don't think we could open the  
21 door to that kind of financing.



1 MR. BOND: Governor, one other comment on the  
2 financing. There has been some suggestions made that the  
3 revenue, as far as issuing bonds for the State, that the  
4 Constitution should be liberalized on that. Do you have  
5 any comments on raising money through bond issues?

6 GOVERNOR TAWES: Money for what purposes?

7 MR. BOND: Well, for highways, bridges, schools  
8 and things like that.

9 GOVERNOR TAWES: Should be liberalized?

10 MR. BOND: Yes, sir.

11 GOVERNOR TAWES: In what way?

12 MR. BOND: Well, what I believe the present  
13 Constitution provides, Mr. Eney, you are more an expert  
14 on this one than I am, what is it, a limitation of --

15 MR. ENEY: Fifteen year provision.

16 MR. BOND: Yes, sir.

17 MR. ENEY: I think what they are talking about,  
18 Governor, is the possibility of amending the constitutional  
19 provision that limits the maturity of State bonds to fif-  
20 teen years.

21 GOVERNOR TAWES: Well, under our present system,





1 it hasn't occurred to me that there should be any change.  
2 We have had no problems. What is the problem, I mean? If  
3 there are any problems, I don't know about it. I think  
4 that fifteen years is a good period. Sometimes, the build-  
5 ings and the construction that we are borrowing the money  
6 for, the equipment doesn't last fifteen years. That is the  
7 purpose of the fifteen years, was to try to pay for the  
8 construction of a building which maybe had a life of fif-  
9 teen years, and the revenue, of course, that we receive  
10 for the interest and amortization requirements is based  
11 on a fifteen year bond program.

12 MR. SAYRE: Do you think this sort of thing  
13 should be in the Constitution?

14 GOVERNOR TAWES: Well, I don't see the need for  
15 it.

16 MR. MINDEL: Mr. Chairman, I might comment that  
17 the Subcommittee on Taxation and Finance has considered  
18 that question and has studied it quite thoroughly, and I  
19 think that will come out of the report on taxation and  
20 finance. That very question has been considered.

21 JUDGE ADKINS: I think that is really a question



1 beyond the scope of our deliberations here.

2 MR. MINDEL: Yes, sir, we have given considera-  
3 tion to that.

4 JUDGE ADKINS: Let's pass on to the next ques-  
5 tion, Governor, and ask you if you feel that the power  
6 to grant executive clemency should be delegated?

7 GOVERNOR TAWES: No.

8 JUDGE ADKINS: You feel that should be reserved  
9 solely for personal exercise by the Governor?

10 GOVERNOR TAWES: I do.

11 JUDGE ATKINS: The next question we have here  
12 is, Should the Governor be granted the power to grant a  
13 nolle prosequi?

14 GOVERNOR TAWES: No, I think not. I can imagine  
15 the pressure a governor would be constantly having, if I  
16 understand what that means.

17 JUDGE ATKINS: I assume it means the right to  
18 tell the State's Attorney that he shall not prosecute.

19 GOVERNOR TAWES: That's what I understand it  
20 to be, yes. I would certainly be opposed to that.

21 MRS. BOTHE: You have never had occasion to



1 exercise your powers?

2 GOVERNOR TAWES: Powers of what?

3 MRS. BOTHE: Nolle pros, you have never had  
4 occasion while in office to exercise your powers?

5 GOVERNOR TAWES: No, I wouldn't want it.

6 JUDGE ADKINS: The next question --

7 GOVERNOR TAWES: I wouldn't want it. I don't  
8 think that would fall in the category of a governor's  
9 prerogatives. I mean to say, I can imagine the confusion  
10 and what a governor would be up against if he had a power  
11 to nolle pros a case in the courts of this State. You can  
12 see the confusion that is existing right now in the  
13 courts. I read in the paper this morning where a State's  
14 Attorney is resigning because of the load that has been  
15 created. No, I certainly can't see where a governor would  
16 be in favor of that requirement, that provision.

17 JUDGE ADKINS: Going on to the next question,  
18 do you feel that the power of the veto, the Governor's  
19 veto power, should be in any fashion altered?

20 GOVERNOR TAWES: I don't see any need for it.

21 JUDGE ADKINS: Are you satisfied with this





1 hangover, this year of having your veto matters come up  
2 for --

3 GOVERNOR TAWES: Consideration. Well, under  
4 our present system, after the session is over and we veto  
5 the bills that we feel are unconstitutional or for some  
6 other reason lack legal sufficiency, we are required to  
7 submit those veto messages to the General Assembly on the  
8 opening day of the next session.

9 Now, in eight years I have vetoed a lot of  
10 pieces of legislation, but I have never had one overridden  
11 yet. We consider those bills very carefully, and let me  
12 see, there was one, I think, that they put up a terrific  
13 fight on, I don't recall what, but we haven't had a veto.

14 There is another provision under the new, the  
15 seventy day session. Now, at the end of the session, any  
16 bills that are left that I veto, that is the end of them,  
17 that is the end of them, they don't go to the next session,  
18 there will be a new Legislature, a new Administration, so  
19 my veto message is final at the end of this session.

20 JUDGE ADKINS: So you see no reason to change  
21 the existing procedure?



1 GOVERNOR TAWES: No, I really don't, I really  
2 don't.

3 JUDGE ADKINS: Does the six-day period give  
4 you sufficient time to consider whether or not to veto a  
5 bill?

6 GOVERNOR TAWES: Under the present system, it  
7 does.

8 JUDGE ADKINS: Do you feel that --

9 GOVERNOR TAWES: Let me amplify that just a  
10 minute. You see, when the bill is sent to us, that's not  
11 the beginning of the six-day period. From the Legislature  
12 we send it to the Attorney General's office. Every piece  
13 of legislation is sent to the Attorney General's office  
14 for their -- for the Attorney General's office to study  
15 the legislation as to constitutionality, legal sufficiency  
16 and so on. Now, when we receive that legislation back,  
17 he may have the bill for, well, two or three days, he may  
18 have it a week before they get around to giving it to us.  
19 Now, this six-day period doesn't begin until when that  
20 bill is returned.

21 JUDGE ATKINS: From the Attorney General's  
office. By that time, of course, the administrative



1 machinery has thoroughly checked it out.

2 GOVERNOR TAWES: By that time. We start  
3 checking the bills as soon as they are passed. Just as  
4 soon as a bill passes, our office undertakes a study of  
5 the provisions and we have some idea of each piece of  
6 legislation that comes up.

7 JUDGE ADKINS: Do you feel that you should  
8 have an item veto more extensive than that which applies  
9 to appropriation bills?

10 GOVERNOR TAWES: Well now, I didn't catch that  
11 last.

12 JUDGE ADKINS: Well, to read the question the  
13 way it is phrased, should the Governor have an item veto?  
14 Should it be limited to appropriation bills?

15 GOVERNOR TAWES: Yes.

16 JUDGE ADKINS: You think it should be limited  
17 to appropriation bills?

18 GOVERNOR TAWES: Yes.

19 JUDGE ADKINS: You don't think you should have  
20 a right to veto sections of other bills?

21 GOVERNOR TAWES: No, I wouldn't go along with





1 that. I think his veto, his item veto should be limited  
2 to the appropriation bills.

3 JUDGE ADKINS: Mr. Eney.

4 MR. ENEY: Judge Adkins, I think one of the  
5 questions was whether or not the Governor should have the  
6 right to remove officials appointed by him other than for  
7 misconduct, an absolute right of removal. Would you care  
8 to comment on that?

9 GOVERNOR TAWES: Well, I don't hardly know  
10 how to comment on that. That's a problem that is one of  
11 the real problems of the Executive. We have had cases  
12 where I would have given anything in the world almost if  
13 there was a provision, if we could have, you know, dismissed  
14 the employee, the department head or the person involved.

15 I think the Governor should have more of an  
16 opportunity to discharge and to dismiss one of his appointees  
17 for more reasons than are now set forth in the law. I think  
18 you remember the various items, but it is not broad enough.

19 JUDGE ADKINS: Is there any reason why he should  
20 not have complete power to the same extent that, for  
21 example, the president of General Motors would have?



1                   GOVERNOR TAWES: I would go along with that.  
2   The Governor is not going to dismiss a good employee, a  
3   man who is doing his duty and doing his job, and doing it  
4   well, and whose knowledge of the work that he has been  
5   called upon to do is excellent. He wants that kind of a  
6   department head, but, you know, you get fooled sometimes,  
7   human nature being what it is, you get fooled occasionally.  
8   Now, I have experienced that. At the time we didn't know.  
9   I think some of you around this table will understand, I  
10   mean can recall some of the problems I have had. I think  
11   the Governor should have the right to dismiss. He puts  
12   the fear in that particular individual. You call him in,  
13   you say, Now, listen here, you are not performing properly,  
14   and you have got to do this job like it should be done,  
15   and you are taking too much time off and going to Florida  
16   every winter, and you are not putting the time in that you  
17   need, and I think the Governor should have the right to  
18   put the fear in that particular individual to keep him on  
19   the job, because if he knows that he can't be dismissed  
20   for the minor infractions as you might refer to them, he  
21   would thumb his nose, so to speak, at the Governor, and he





1 will say, I am only in here for one term, anyhow, so what  
2 is the difference.

3 JUDGE ADKINS: Would you limit that to heads  
4 of departments?

5 GOVERNOR TAWES: Appointees of the Governor.

6 JUDGE ADKINS: In other words, you would prefer  
7 a provision that they simply serve at the will of the  
8 Governor?

9 GOVERNOR TAWES: That's right, at the pleasure  
10 of the Governor. We have some of those departments now.  
11 The Chairman of the State Roads Commission, the Director  
12 of Forests and Parks serve at the pleasure of the Governor.

13 Now, I think I should emphasize the fact that  
14 these cases are rare. Most of the department heads that we  
15 choose, we select, perform a job and do an excellent job,  
16 and perform well, but in a few cases when that does arise,  
17 I think the Governor should have the right to admonish the  
18 department head and tell him what the job is and what he  
19 has got to do if he is going to stay on the job.

20 MR. ENEY: Judge, with your permission, I would  
21 like to ask if any other members of the Commission who are





1 not on this particular Committee would like to ask any  
2 other questions, Mrs. Freedlander or Mr. Smith, Mr. Mil-  
3 ler, Dr. Bard?

4 JUDGE ADKINS: Are there any other questions?  
5 I think the Governor's time is probably running out on us.

6 MR. ENEY: Yes.

7 GOVERNOR TAWES: Yes, sir, I want to thank you.

8 MR. SAYRE: Governor, could I raise one more  
9 question?

10 GOVERNOR TAWES: Yes, indeed.

11 MR. SAYRE: That you don't have to answer. It  
12 has been suggested that there should be a provision on re-  
13 apportionment where the Governor would have the authority  
14 to appoint a commission that would set up the reapportion-  
15 ment system, based upon the latest census, and that you  
16 then would proclaim what their decisions were as the new  
17 apportionment system, and if they had not come up with a  
18 plan, that you would have the authority to declare your  
19 own system without going into other extensions. Do you  
20 think that would be a good authority for the Governor to  
21 have?



1 GOVERNOR TAWES: I would rather not answer  
2 that question, I would let the candidates answer that ques-  
3 tion.

4 Now, under the present reapportionment planned,  
5 the redistricting of the senatorial districts and so on, I  
6 think that the law provides that in the event this Legis-  
7 lature does not pass the redistricting provisions under  
8 the reapportionment bill that we are going to be operating  
9 under, then the Governor is required to set up the senatorial  
10 districts in the areas.

11 MR. SAYRE: Well, if the Constitution --

12 GOVERNOR TAWES: I would have no objection to  
13 doing that because you sit down with the people of the  
14 area, the Governor doesn't arbitrarily say, Now, listen,  
15 I am going to take the map and I will mark this out that  
16 way. You are going to sit down and work it out with the  
17 local people, with the local government.

18 MR. SAYRE: So that if the Constitution gave  
19 you that authority, you don't see any reason to object to  
20 that authority?

21 GOVERNOR TAWES: Not particularly, no.



1 JUDGE ADKINS: Governor, on behalf of the  
2 Committee, I would like to express our real appreciation  
3 for your taking the time to give us the experience of your  
4 knowledge.

5 GOVERNOR TAWES: Well, thank you, and, Judge,  
6 as I say, we have sort of rambled around, but I have given  
7 you the benefit of my views based on the experience I have  
8 had in the Governor's office.

9 JUDGE ADKINS: That was essentially what we  
10 hoped for.

11 GOVERNOR TAWES: We have had great changes,  
12 you know, in the State Government in the last eight or ten  
13 years with the exploding population, the increased school  
14 population, the demands on our colleges and our university.  
15 There are greater problems existing today than ever before,  
16 and I have tried to project some of my thinking to the  
17 future, not of the present, what I believe the State needs  
18 if it is going to carry on.

19 I think we have a good State. I think when  
20 we compare Maryland and the other States of the nation,  
21 we may not rank first, we may not rank second, but certain-





1 ly we are not last in any category that I can think of,  
2 but we have tried to do what is necessary to improve the  
3 services the State gives, and these demands are going to  
4 be greater as the years come and go.

5 I would be interested to hear what Governor  
6 Lane is going to say and what Governor McKeldin is going  
7 to say.

8 JUDGE ADKINS: We would be delighted to have  
9 you stay.

10 GOVERNOR TAWES: But I don't know whether our  
11 ideas are going to coincide or not, but I have given you  
12 the benefit of the best I know.

13 MR. ENEY: Thank you very much, Governor.

14 JUDGE ADKINS: Thank you.

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2  
3 CONSTITUTIONAL CONVENTION COMMISSION  
4  
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7 Meeting of Committee on Executive  
8 Department with Mayor Theodore R. McKeldin  
9 was held on Thursday, February 24, 1966, at  
10 10:45 o'clock a.m., Eastern Standard Time,  
11 at Room 801, State Office Building, Baltimore,  
12 Maryland.  
13 -----  
14  
15  
16  
17  
18  
19

20 Reported by:  
21 M. Wasserman





1 COMMITTEE MEMBERS PRESENT:

2 Honorable E. Dale Adkins, Jr.,  
3 Chairman

4 Calhoun Bond, Esquire  
5 Mrs. Elsbeth Levy Bothe  
6 Charles Mindel, Esquire  
7 Mr. E. Phillip Sayre  
8 Honorable William Preston Lane, Jr.  
9 Mr. Garrett Power  
10 Ernest N. Cory, Jr., Esquire

11 ALSO PRESENT:

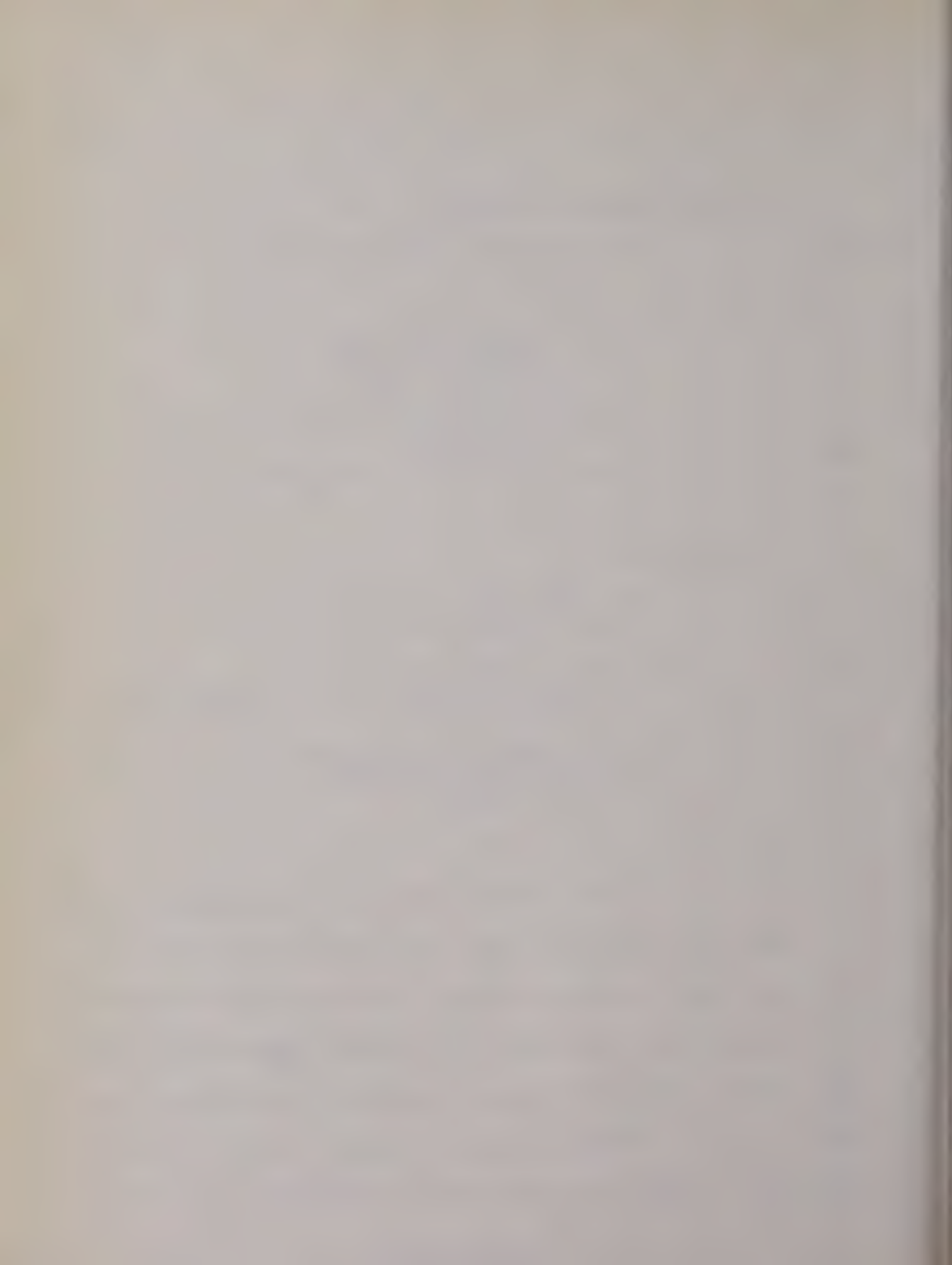
12 H. Vernon Eney, Esquire,  
13 Commission Chairman

14 John C. Brooks, Esquire,  
15 Executive Director of the Commission

16 Mrs. Maurice P. Freedlander  
17 Edward T. Miller, Esquire  
18 Dr. Harry Bard  
19 -----

20 JUDGE ADKINS: Mr. Mayor, we appreciate very  
21 much your taking the time from your busy schedule to be  
with us. We would be happy, Mayor McKeldin, to have you  
either give a statement or to answer the questions which  
we have presented you with, whichever you prefer to do.

MAYOR MCKELDIN: Suppose I answer. I mean, I  
will do what you want me to do, of course, but I have these



1 questions that you have propounded. I have my own pre-  
2 pared answers, and if you would like to hear those and  
3 then ask me at the end of each one any other thing you want  
4 to ask me, I will be glad to give you my answer.

5 JUDGE ADKINS: I think that is an excellent  
6 way to proceed.

7 MAYOR McKELDIN: The first question that was  
8 submitted to me is, Should the restriction limiting a  
9 governor to two consecutive terms be continued? I don't  
10 know if I could give a definite answer to that. I remem-  
11 ber when we enacted that, I talked with Governor Dewey  
12 in New York at the time. He said, Why in the world would  
13 you pass such a law as that? If you have a good man, you  
14 want to keep him, don't you? If you have a bad man, you  
15 can get rid of him. Why would you want to get rid of him  
16 at the end of two terms? Well, I said, We feel that maybe  
17 there will be a dynasty if one man stays for fifteen years  
18 or sixteen years as Governor Ritchie for fifteen years,  
19 and he will build up such an organization that it probably  
20 would be very difficult to get rid of him, even though later  
21 on he turned out not to be as good as he was in the begin-



1       ning. So my feeling is, my own opinion is that we should  
2       be limited to two terms. I think if he is a good governor,  
3       he can get his program through in two terms and if he  
4       can't get it through in two terms, he is a bad governor,  
5       and we ought to get rid of him just at the end of two  
6       terms without even having any problem with him, so that's  
7       my answer, such as it is on the first question.

8               The second question, Should the Constitution  
9       provide for a method of succession to the governorship  
10      in the event of physical or mental incapacity of the  
11      Chief Executive?

12             I think it will be wise, I believe, to have a  
13      Commission of State Officials including say, the State  
14      Health Commissioner, the Commissioner of Mental Hygiene,  
15      and the Attorney General, among others, to pass on the  
16      question of a governor's capacity to continue serving,  
17      under carefully prescribed conditions. Strict safeguards  
18      should be spelled out, of course, to prevent any possible  
19      abuse of the power. Neither the Legislature nor any member  
20      of the Legislature should be involved in this Commission's  
21      decision.





1                   Should the election of State officials be  
2 moved to odd-numbered years when no Federal officials are  
3 elected?

4                   I see no need for a change here. I think we  
5 have enough elections now.

6                   Of course, it was changed once, as you remem-  
7 ber, when the Democratic party got rather worried about  
8 the election of a Republican President. We elected a  
9 Republican President, and when we did that, they went along  
10 and elected Republicans down the line. I remember in  
11 Governor Ritchie's administration, they changed that.  
12 That's why Governor Ritchie served only three years instead  
13 of four years, served fifteen years instead of sixteen  
14 years, so he wouldn't come along with the President, and  
15 in that way they would be able to elect more Democratic  
16 governors. I say that in a friendly way, Pres.

17                  The next question is, Should the Governor take  
18 office sooner than the fourth Wednesday in January so that  
19 he can assume responsibility for budget preparation for  
20 the next legislative session, and my answer to that is,  
21 although there is some question to it, I think the present



1 system is entirely satisfactory because no more than you  
2 are elected Governor, you, of course, immediately begin,  
3 if you are elected in November, you immediately begin at  
4 that very minute to work on the budget. In other words,  
5 the Budget Director then confers with you and not the  
6 Governor that is going out, so you have from November  
7 until -- November, December and January to work on the  
8 budget, and that has been the policy in this State, and I  
9 see no reason, in my opinion, for changing it.

10 Should the administrative structure of the  
11 State be reorganized so as to concentrate more power in  
12 the Governor?

13 Yes. The dominant characteristic -- and the  
14 dominant deficiency -- in State government is the plural  
15 executive. Nowhere else on the American organizational  
16 scene do we see this anachronism, this atavistic relic.  
17 Virtually everywhere else in American organizations --  
18 industrial, commercial, institutional, and in most other  
19 governmental sectors -- the unequivocal rule of action,  
20 indeed the fundamental premise, of administration is the  
21 Chief Executive in both name and fact. It has long been



1 accepted as a truism that power, authority and responsibil-  
2 ity are simply special aspects of the same thing. And yet,  
3 State governments continue to operate on the same basis  
4 as their colonial antecedents, antecedents, which it must  
5 be recalled, were guided by a host of considerations alto-  
6 gether unrelated to today's problems and requirements --  
7 including distrust of gubernatorial appointees made by  
8 King George III, admixed with 18th Century notions of  
9 checks and balances.

10 The next question is, Should the Governor --

11 JUDGE ADKINS: Governor, would you mind if we  
12 asked you a few questions --

13 MAYOR McKELDIN: Any time.

14 JUDGE ADKINS: -- on that point?

15 MAYOR McKELDIN: Yes, of course.

16 JUDGE ADKINS: This is, of course, of consider-  
17 able interest to us.

18 MR. BOND: Governor, I am sorry, we are quite  
19 concerned about the idea of having a cabinet form of govern-  
20 ment, in other words, all heads of departments would serve  
21 at the pleasure of the Governor, and I would like to know,





1 are you in favor of having all your department heads  
2 serve at the pleasure of the Governor, be subject to ap-  
3 pointment by the Governor, removal by the Governor, and the  
4 present boards, some of which exercise executive authority,  
5 become advisory; are you in favor of that?

6 MAYOR MCKELDIN: Having a cabinet appointed?

7 MR. BOND: Well, having -- in other words,  
8 the heads of all your departments would become -- would  
9 serve at your will and would be in essence your cabinet.

10 MAYOR MCKELDIN: Yes, well, they are your  
11 cabinet anyhow, even if they don't serve at your will, they  
12 are still your cabinet, I mean you still confer with them,  
13 and my own feeling is that they should be subject to the  
14 will of the Governor and should serve not for any term but  
15 should serve at the will of the Governor, yes.

16 MR. BOND: And how far down the line should  
17 this go? In other words, you have your heads of your  
18 various departments, then you have your various sub-heads,  
19 your heads of your institutions. How do you feel about the  
20 Governor's right of removal and whether these people should  
21 serve at the convenience of the Governor, and how about



1 the merit system and tenure?

2 MAYOR MCKELDIN: I would limit it, I think,  
3 to the head of the department. I wouldn't get below that  
4 because you get mixed up in a lot of very nasty politics  
5 which is bad for the general public and is bad for the  
6 Governor, and bad for government, and, unfortunately, you  
7 have to do it. I sometimes think it would be better not  
8 to have the Civil Service sometimes because you are hooked  
9 with it, and the particular Civil Service Commission, with  
10 them, too.

11 Should the Governor be the only popularly  
12 elected executive official? Is there a need for a lieu-  
13 tenant governor or some other assistant executive official?

14 To some extent, Maryland now has a short  
15 ballot, I believe, compared with some of the other States.  
16 However, I believe the Governor should appoint the top  
17 fiscal authorities such as the Comptroller and the Treas-  
18 urer, or their equivalents.

19 MR. SAYRE: How about the Attorney General?

20 JUDGE ADKINS: How about the Attorney General,  
21 should he be elected or appointed?



1                   MAYOR McKELDIN: Should the Attorney General,  
2 Comptroller and Treasurer be appointed by the Governor is  
3 the next question.

4                   The Attorney General, I believe, should con-  
5 tinue to be elected by the people. He should be free from  
6 any suspicion of being subject to the influence of the  
7 Governor when he is called upon to render opinions, but  
8 the others, I think, should be appointed by the Governor.

9                   Should the Governor's appointments -- let me  
10 say this before I forget it. You didn't ask me this, but  
11 I think the Governor's salary by all means should be taken  
12 out of the Constitution. That is a terrible thing to have  
13 the Governor's salary in the Constitution.

14                  JUDGE ADKINS: Do you think there should be a  
15 minimum salary provided in the Constitution so the Legis-  
16 lature could not cut off a recalcitrant governor?

17                  MAYOR McKELDIN: It should be a minimum of at  
18 least \$25,000 or \$35,000 for the Governor, yes. I got  
19 4500, you remember, so did Pres, \$4500.

20                  I had a boy at Washington and Lee and a girl  
21 at the University of Maryland. 4500, I had to go around





1 the country making speeches, otherwise they could not have  
2 gone to college, impossible, impossible, and I was criti-  
3 cized for that, but I had no choice, \$4500, what could I  
4 do with 4500, and the newspapers, every time you said 4500,  
5 they said, Look, you have got a yacht, a yacht with nine-  
6 teen crewmen. So what. I was on that very seldom, but even  
7 if I had it, so what, a crew of nineteen; and then you  
8 have a fifty-one room mansion. So what. My girl and boy  
9 were away at school, I was making speeches and my wife  
10 was locked up in one of those fifty-one rooms, and then you  
11 have five servants and butlers and \$20,000 for food. So  
12 what. There was nobody there to eat that food. And you  
13 have people who come in that you invite to eat all your  
14 food and drink all your liquor. I didn't have any liquor,  
15 but if I had it, they would have.

16 Should the Governor's appointments of officials  
17 be subject to the advice and consent of the Senate?

18 I don't think so, I don't think so. I think  
19 the Governor is elected, it is his responsibility, and I  
20 think the Governor ought to have the right to make the ap-  
21 pointments, and that is one of the great advantages, one



1 of the advantages of having the Police Commissioner ap-  
2 pointed by the Governor, he doesn't have to have him con-  
3 firmed.

4 JUDGE ADKINS: Would you do away with the so-  
5 called Green Bag appointments now and have them and also  
6 the local officials appointed without confirmation?

7 MAYOR MCKELDIN: Yes, yes.

8 Should the heads of all administrative depart-  
9 ments serve at the will of the Governor?

10 I have already said that, yes.

11 Then, should the Board of Public Works be re-  
12 organized?

13 Sometimes I think it should be abolished. A  
14 board is simply a buffer, as you know, a hobbling impedi-  
15 ment sometimes, but I don't guess it is possible to do it.  
16 I think it can hinder the administration of the State's  
17 business.

18 For example, I am a Republican, as you know,  
19 and I was elected and we have a Democratic Legislature,  
20 they elect, naturally, a Democratic Treasurer and, of  
21 course, the Comptroller is naturally a Democrat. We don't



1 elect anybody but a Governor every twenty years in this  
2 State who is a Republican, so the Board of Public Works  
3 consists of a Republican Governor and two Democrats. For-  
4 tunately, they have been very cooperative, because the  
5 Treasurer has been a high-type man who has not been involved  
6 in politics, which is a blessing like John Luetkemeyer, see,  
7 he wouldn't play politics, but if the Comptroller and the  
8 Treasurer get together, they could give the Governor a fit.

9 JUDGE ADKINS: May I ask a question, Mayor?

10 MAYOR McKELDIN: Yes.

11 JUDGE ADKINS: In the recommendation which you  
12 have made to the effect that the Comptroller should be ap-  
13 pointed by the Governor, is there any reason for him to  
14 continue as a member of the Board of Public Works if, in  
15 fact, we continue a Board of Public Works?

16 MAYOR McKELDIN: I wouldn't see any reason, no.  
17 He is only advisory, of course, and the Board has its ad-  
18 visors, I mean whether they are on the Board or not. Repeat  
19 it again for me.

20 JUDGE ADKINS: Well, if you make the Comptroller  
21 appointive, as you have recommended, should he then be a





1 member of the Board of Public Works? He is now, as I  
2 understand it, a member of the Board of Public Works.

3 MAYOR McKELDIN: Yes.

4 JUDGE ADKINS: If he is appointed, would you  
5 then remove him from the Board of Public Works as a voting  
6 member, assuming always that you continue a Board of Pub-  
7 lic Works?

8 MAYOR McKELDIN: Yes, I would remove him, I  
9 don't see any reason why he should be there.

10 JUDGE ADKINS: You would remove him?

11 MAYOR McKELDIN: Yes.

12 MR. ENEY: Would you continue something such  
13 as a Board of Public Works either under that name or a  
14 different name?

15 MAYOR McKELDIN: I don't know, I mean, it seems  
16 to me that the department heads could make the decisions  
17 themselves with reference to a lot of items that appear  
18 before the Board of Public Works. The Board of Public  
19 Works, its time is taken up, I guess 70 per cent, with a  
20 lot of trivia which is nothing, just nothing that should  
21 ever come before the Board of Public Works. Just like the



1 Board of Estimates, we spend hours in the Board of Estimates  
2 okaying a bill for \$1.25, \$2.87, and it is ridiculous, and  
3 a lot of that stuff appears before the Board of Public  
4 Works at times, and should not be there, but if you are  
5 going to have a Board of Public Works, if you decide that  
6 the individuals themselves are not capable of making the  
7 decisions, the department heads -- I think the department  
8 heads could really make a lot of these decisions that the  
9 Board of Public Works makes -- it might be well to have  
10 the Treasurer and the Comptroller there.

11 JUDGE ADKINS: Based on your experience, do  
12 other states have bodies comparable to the Board of Public  
13 Works?

14 MAYOR McKELDIN: I don't know.

15 MR. ENEY: If you continue such a board, would  
16 it be desirable to have a representative of the Legislature  
17 as a member?

18 MAYOR McKELDIN: I wouldn't think so. A man  
19 who is elected to the Legislature, if he is appointed the  
20 President of the Senate, or the Speaker of the House, he  
21 has to be done so by, of course, a greater political power



1 than the others, and he would be subjected, of course, to  
2 that political influence, and if he was on the board, he  
3 would constantly be importuned by some of the members to  
4 vote for this and vote for that because they voted for  
5 him. I think that might be bad.

6 JUDGE ADKINS: When you commented on what  
7 officials should be elected, do you feel that the present  
8 method of selecting the State Treasurer is a good one,  
9 having him elected by the Legislature rather than by  
10 either the people or appointed?

11 MAYOR MCKELDIN: Well, he is really, as you  
12 know, of course, not elected primarily by the Legislature,  
13 he is appointed by the Governor, and the Governor gives  
14 the word, and that's it, I mean as a practical matter,  
15 that is it.

16 JUDGE ADKINS: This is true if the Governor  
17 is of the same party as the Legislature, but it wasn't  
18 true when you were in office.

19 MAYOR MCKELDIN: Exactly, exactly, but they  
20 have done well by the Treasurer. We have had excellent  
21 Tresurers of this State, and I don't know any of them that





1 I would not be proud of, that didn't do a good job, but  
2 there is a danger, of course, that they may, but they  
3 haven't done it, and so I don't see any reason for changing  
4 it unless you have something better.

5 Should the merit system for appointments and  
6 promotions be extended to all State employees other than  
7 department heads?

8 I believe that department heads should have  
9 some leeway in the selection of key personnel, such as  
10 wardens of penal institutions and institution heads. The  
11 Merit System should be extended to include all below depart-  
12 ment heads and top sub-agency heads. I can think of no  
13 group of full-time employees who should not be entitled to  
14 the protection of the Merit System.

15 Should the Governor be given the power to alter  
16 the functions of the administrative departments to the  
17 extent necessary for efficient administration?

18 Yes. How else, of course, can he manage?

19 Minor matters, particularly so, especially  
20 with the budget, if not definitely set up by legal act.

21 Should the Governor have the power to require



1 administrative departments to furnish him with information?

2 Of course, most emphatically so.

3 The question surprises me, because I am under  
4 the impression that the Governor has such power and cer-  
5 tainly, when I was Governor, I never had any trouble ob-  
6 taining requested information from any department.

7 MR. SAYRE: Mayor.

8 MAYOR McKELDIN: Yes.

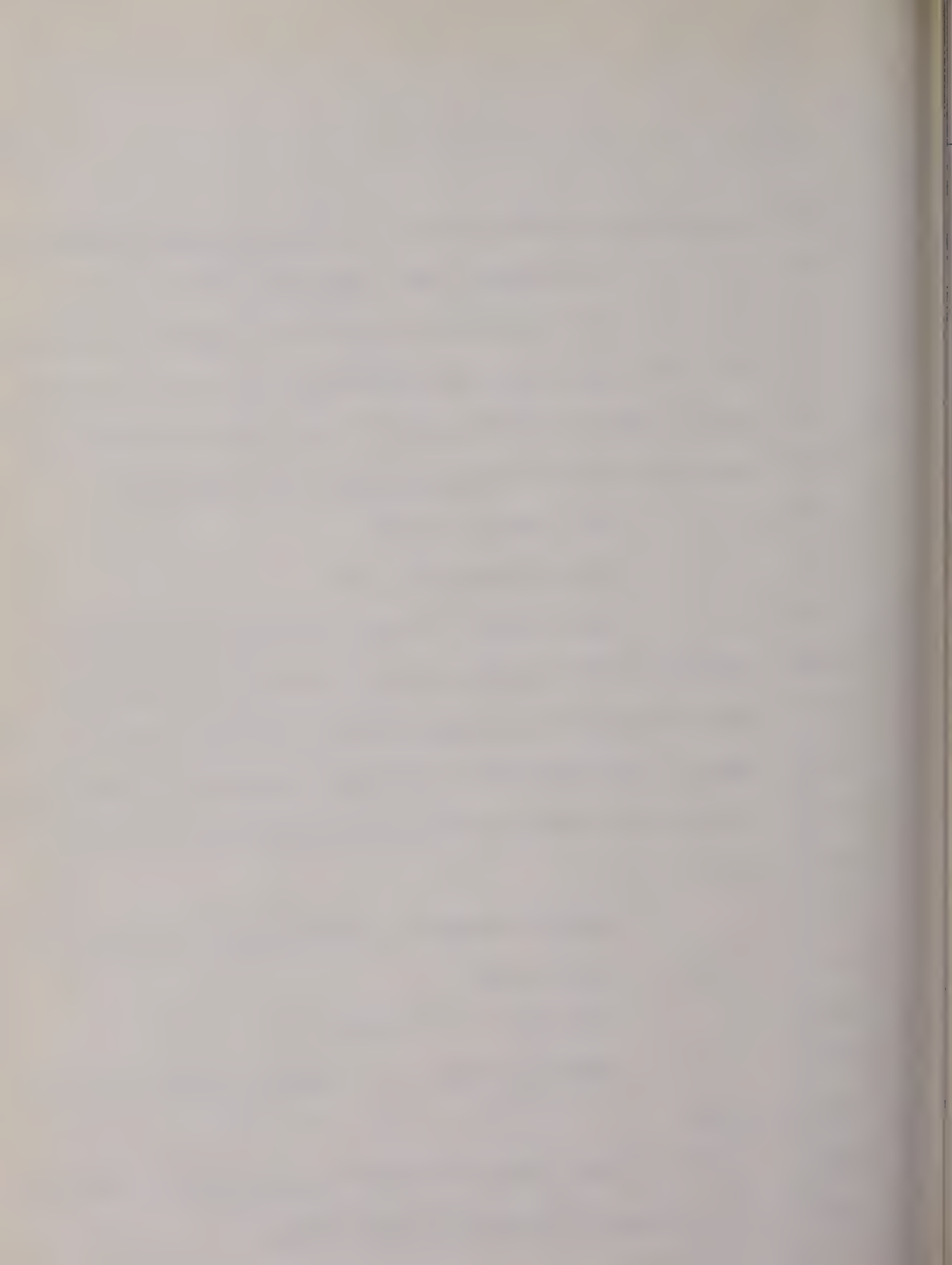
9 MR. SAYRE: On the area of your authority to  
10 reorganize the executive branch, to what extent do you  
11 think you should have the authority to, say, reshuffle the  
12 agencies and reorganize, and what limitations or authority  
13 do you think the Legislature should have in that respect,  
14 also?

15 MAYOR McKELDIN: I think I may have an answer  
16 to that. I think I may.

17 MR. SAYRE: All right.

18 MAYOR McKELDIN: If I don't, I will come back  
19 to that.

20 What powers does the Governor need to fulfill  
21 his functions as preparer of the budget?



1           My answer to that is absolutely none that he  
2 does not already have. Only his present powers, and they  
3 are completely satisfactory, and I think, ample.

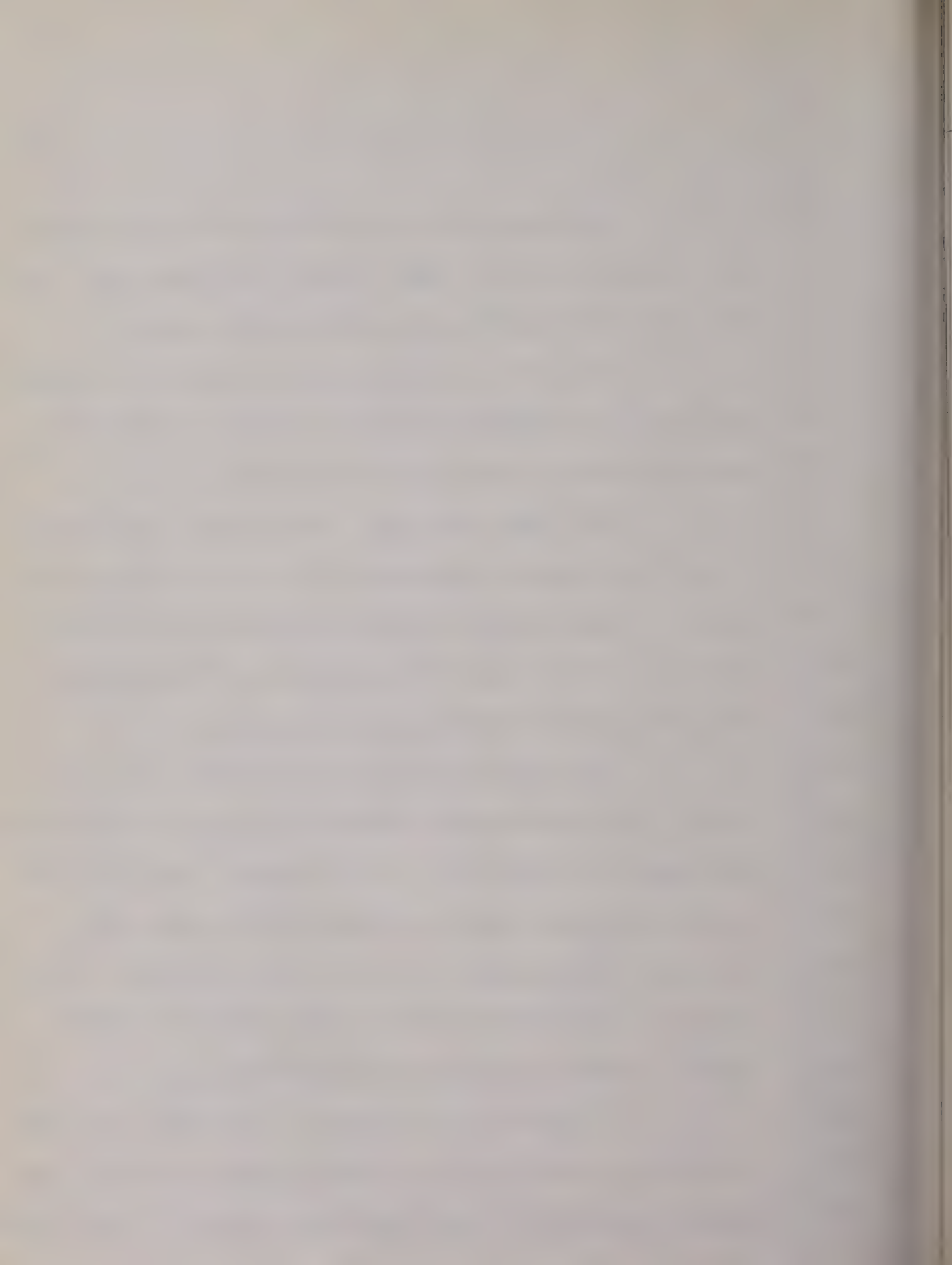
4           Should the Governor have the power to delegate  
5 his powers of executive clemency? Should the Governor  
6 have the power to grant a nolle prosequi?

7           No, some years ago, the Governor was relieved  
8 of the time-consuming responsibility for the granting of  
9 paroles. This was with my approval when I was Governor.  
10 I did that. The powers of commutation and the granting  
11 of pardons should remain with the Governor.

12           Of course, the Governor consults a lot of  
13 people. He talks with the State's Attorney, he talks with  
14 the judges, he talks with a lot of people concerning that,  
15 so he really has a lot of advice before he makes his  
16 decision, and I commuted nineteen death sentences. I am  
17 opposed to capital punishment. Three of them I didn't  
18 commute, I didn't have the courage to commute.

19           I talked to the judges. I remember one judge  
20 I talked to, I said to him, I said, Judge, you didn't have  
21 this man examined by a psychiatrist, and you have one right





1 next door here in the Courthouse. He said, I know. He  
2 said, I had enough on him to hang him. I said, Thank  
3 you, Judge. It takes you two seconds to commute a death  
4 sentence like that, of course.

5 MRS. BOTHE: Mayor McKeldin, do you think the  
6 Governor should have the power to nolle prosequi?

7 MAYOR MCKELDIN: No.

8 MRS. BOTHE: Did you have occasion to exercise  
9 that power?

10 MAYOR MCKELDIN: I don't think the Governor  
11 should become involved in that.

12 MRS. BOTHE: You think it should be deleted  
13 from the Constitution?

14 MAYOR MCKELDIN: I think it should be deleted,  
15 I certainly think so.

16 Should the Governor have a veto power?

17 Yes, of course. He should be an active parti-  
18 cipant in legislation. Certainly the Governor should have  
19 a veto power.

20 Should a 3/5 vote of the Legislature be able  
21 to override a veto?



1           Yes. But I might be willing to argue for  
2 even a 2/3 vote, thereby making it less likely that the  
3 Legislature could overrule the Governor's responsibility  
4 for seeing to it that wise and necessary legislation was  
5 enacted.

6           Does the six-day period give the Governor  
7 sufficient time to consider whether or not to veto a bill?

8           I am sure that six days is certainly not suf-  
9 ficient time for studying and checking many pieces of  
10 legislation before Executive action. While I don't suppose  
11 a hard and fast rule can be laid down, ten to fourteen  
12 days is more like the time ordinarily required for the  
13 Governor to be apprised of all the facts. Why hurry the  
14 process and deny the Governor a reasonable opportunity to  
15 gain the facts?

16           The six-day period after the passage of a bill  
17 is not sufficient time for a study and check.

18           Should the Governor's pocket veto be expanded  
19 so that bills that die by veto or by being left unsigned  
20 after the Legislature adjourns need not be returned at  
21 the next session of the Legislature for possible override?



1 I believe that bills vetoed after the close  
2 of a session should be dead and not available for overriding  
3 at the next session. There is nothing, of course, to  
4 prevent introduction of similar legislation early in the  
5 next session and passing it so that the Assembly will have  
6 plenty of time to override a second veto.

7 That is particularly true when there is an  
8 election and a new group comes in and they know nothing  
9 about -- the majority of them, a lot of them know nothing  
10 about what went on before, and I think they should be  
11 privileged to vote on that.

12 Should the Governor have a item veto and should  
13 it be limited to appropriation bills?

14 The answer to both the questions in my opinion  
15 is Yes.

16 While the item veto is essential to sound  
17 fiscal management in considering appropriation bills, it  
18 should not be extended to other types of legislation, of  
19 course not, to other types of legislation. It could be  
20 used in such manner as to deceive the public while destroy-  
21 ing the meaning and purpose of a law.





1 MR. ENEY: Mr. Mayor, do you think there  
2 should be an official such as a lieutenant governor who  
3 would take over not merely in the event of the physical  
4 or mental disability of the Governor, but in the absence  
5 of the Governor?

6 MAYOR MCKELDIN: I don't think so. I think  
7 we have done very well without a lieutenant governor, par-  
8 ticularly if a lieutenant governor is elected as an indi-  
9 vidual rather than with a governor. If he were elected  
10 as the President and Vice-President are elected together,  
11 it wouldn't be so bad, but I am a Republican, and if I  
12 am elected Governor, you know very well a Democrat would  
13 be elected lieutenant governor because it is only a miracle  
14 that we get elected, so you would have a Democratic lieu-  
15 tenant governor and Republican governor and which I think  
16 would be a very bad thing for the State, a very bad thing.

17 MR. ENEY: Well, suppose they were tied together  
18 in the way the Presidency and Vice-Presidency are, do you  
19 think it would be desirable then?

20 MAYOR MCKELDIN: I don't think it would be  
21 desirable. I think the present situation is all right, let



1 the President of the Senate take over in the event of the  
2 death of the Governor.

3 MR. ENEY: I wasn't thinking so much of death  
4 or disability but absence either from the State or from  
5 the country. There is no provision now for anyone to  
6 exercise the functions of the Governor in the event of his  
7 absence.

8 MAYOR McKELDIN: I don't think it has worked  
9 to any disadvantage up to this time. I know of no case  
10 where it has worked to a disadvantage in the absence of  
11 the Governor.

12 No matter where the Governor is, he can always  
13 be reached over the telephone, no matter where you are.

14 They called me in Tokyo when I was a Special  
15 Ambassador a few months ago.

16 MR. ENEY: You have had the experience both as  
17 Governor and as Mayor of Baltimore City, and you do have  
18 such a provision for an Acting Mayor in your absence, so  
19 the contrast might give you some particular insight. Would  
20 you care to comment further?

21 MAYOR McKELDIN: Yes. Of course, the Acting



1 Mayor has no authority. He may have authority, but nobody,  
2 I mean my department heads, for example, the department  
3 heads wouldn't pay any attention to him. I mean, there  
4 wouldn't be anything that they would do until they got in  
5 touch with the Mayor, so the man who acts as Mayor very  
6 seldom comes into the office, as a matter of fact. If  
7 you want him, you call him in his law office, or wherever  
8 he is, so he is never there, even in the absence of the  
9 Mayor. He may come in sometimes and have his picture  
10 taken, and that's all.

11 MR. BOND: He had a reception.

12 MAYOR McKELDIN: I beg your pardon?

13 MR. BOND: He had a reception.

14 MAYOR McKELDIN: He had a reception, that's  
15 when I was away, he had a reception and they had it in  
16 my office.

17 MR. SAYRE: You don't believe that succession  
18 due to death or disability would be more desirable from a  
19 Statewide elected official rather than from one like the  
20 President of the Senate?

21 MAYOR McKELDIN: It is the same thing, you see,





1       it is the President of the Senate and the President of  
2       the City Council. The President of the City Council be-  
3       comes the Mayor because he is the President of the City  
4       Council and the same with the President of the Senate,  
5       because he is the President of the Senate.

6               MR. SAYRE: But he is elected only from a  
7       part of the State.

8               MAYOR McKELDIN: Yes, that's right.

9               MR. SAYRE: You don't think that's a disad-  
10      vantage?

11              MAYOR McKELDIN: I don't think so, sometimes  
12      it is an advantage.

13              MR. ENEY: Would you provide for it in the  
14      Constitution or leave it to the Legislature to provide the  
15      method of succession?

16              MAYOR McKELDIN: If the Legislature is going  
17      to make the selection, if they are going to change the  
18      present method, I think you ought to do something first.

19              MR. BOND: Mr. Mayor, do you feel that the  
20      responsibility for the preparation of the budget should  
21      remain as it is an executive function and not with -- and



1 with no participation by the Legislature?

2 MAYOR McKELDIN: Absolutely, yes. My gracious,  
3 it would be a tremendous tragedy if that were not so in  
4 my opinion.

5 MR. SAYRE: Do you feel that, and I know this  
6 is overlapping, but do you feel that to earmark funds  
7 would provide any restrictions on your fiscal program?

8 MAYOR McKELDIN: For example?

9 JUDGE ADKINS: State Roads.

10 MR. SAYRE: State roads.

11 JUDGE ADKINS: Gasoline tax, that kind of  
12 thing.

13 MR. SAYRE: Yes.

14 MAYOR McKELDIN: I think so, I think so. You  
15 mean the gasoline tax just for roads?

16 MR. SAYRE: Yes, but suppose you had, just  
17 hypothetically, you had a program that required either  
18 additional taxes, or if you didn't have earmarked funds,  
19 you would have the additional money if there were not ear-  
20 marked funds perhaps.

21 MAYOR McKELDIN: That may be a good thought,



1 but it would have to be carefully guarded and protected. .  
2 If that could be done, that would not be bad.

3 For example, we got the State to give us some  
4 money for our police out of the gasoline tax for the roads,  
5 because the State uses it, of course, for their police,  
6 and we thought we could use it for our police, and the  
7 Governor very kindly gave us some for the City Police,  
8 which is, of course, under the control of the Governor.

9 MR. ENEY: Mr. Mayor, can you come back to  
10 Mr. Sayre's earlier question as to possible reorganization  
11 of the Executive Department by the Governor; would you be  
12 in favor of the Constitution giving the Governor complete  
13 authority to reorganize the Executive Department by execu-  
14 tive order, or would you want to confer that power on the  
15 Legislature?

16 MAYOR McKELDIN: I would give it to the Governor.

17 MR. ENEY: Would you have any limitations on  
18 it as to how far he could go in abolishing departments or  
19 in merging departments?

20 MAYOR McKELDIN: Well, I think there ought to  
21 be a limit on that. I think there ought to be a limit on





1 that. He ought not to just simply be able to in between  
2 sessions abolish certain departments and transfer them to  
3 others, I think that would be a tremendous mistake.

4 JUDGE ADKINS: What would you think of having  
5 a limitation similar to the limitation of the Congress on  
6 executive orders of the President? I think there is a  
7 time limitation there, isn't there? If the President  
8 passes an executive order, then the Congress has a certain  
9 period of time within which to veto the order. Would you  
10 favor that kind of a limitation?

11 MAYOR McKELDIN: I would think so, I would  
12 think there would be some need for a little security. If  
13 you get a governor who was politically inclined and wanted  
14 to put all of his friends in, get all of the others out,  
15 I think it would be good to have a safeguard on him, yes.

16 JUDGE ADKINS: Any other questions from this  
17 end of the room?

18 DR. BARD: Governor, in Article 2 there is a  
19 discussion of the Secretary of State. I have two questions  
20 in respect to the Secretary of State.

21 One, do you believe that it is necessary for



1 the Constitution to deal with the position of the Secre-  
2 tary of State, because it currently deals with that posi-  
3 tion in two sections. Need there be any statement in  
4 respect to the Secretary of State and, secondly, would you  
5 change --

6 MAYOR MCKELDIN: Give me the first one first,  
7 explain that.

8 DR. BARD: Let's take the first one. Would  
9 you at all include a delineation of the responsibilities  
10 of the Secretary of State in the Constitution? Do you  
11 feel that it is necessary to deal with it in the Consti-  
12 tution itself, the position of the Secretary of State?

13 MAYOR MCKELDIN: I don't know, I don't know,  
14 in or out, it wouldn't make any difference to me.

15 DR. BARD: Well then, secondly, would you in  
16 any sense change the responsibilities of the Secretary of  
17 State for the State of Maryland, or would you keep him as  
18 a fairly --

19 MAYOR MCKELDIN: Ceremonial.

20 DR. BARD: A ceremonial position at this time.  
21 What are your feelings in respect to that?



1           MAYOR McKELDIN: Well, it depends on what you  
2 want to do with him, what the Governor wants to do with him.  
3 For example, the salary, I think was about \$2500 when I  
4 was elected, but I brought Blanchard Randall in, and I  
5 think we raised the salary to about \$10,000 so that he  
6 really could be more than ceremonial, so that he could  
7 really be there and make some contribution, but either  
8 way, either 2500 as ceremonial or \$10,000 or \$15,000 and  
9 have him a part of the organization and part of the Ad-  
10 ministration, and do some work.

11           DR. BARD: But you don't think it is neces-  
12 sarily important to keep a description of the office in  
13 the Constitution?

14           MAYOR McKELDIN: I think it is -- it may not  
15 be important, but it is necessary to keep it there. It  
16 gives him a little prestige, he is in the Constitution,  
17 and he signs all the commissions and all. I think it is  
18 important, I would keep it there.

19           JUDGE ADKINS: Mr. Miller.

20           MR. MILLER: Governor, Mr. Mayor, getting back  
21 to this question of a lieutenant governor, would you feel





1 that there would be any objection to having in our Consti-  
2 tution the election of a team, that is a governor and a  
3 lieutenant governor, in view of the fact that we are in  
4 a -- we have been very lucky in Maryland, we have never  
5 had any trouble; we have had no trouble on the national  
6 level where they have a team, but today our governors, of  
7 necessity, have to go abroad, and around the world, and  
8 in this atomic age there can be blockades, things of that  
9 sort. What would happen right as we are today if a governor  
10 got waylaid because of war or other emergency and was  
11 miles away and out of communication, shouldn't we have  
12 somebody empowered to perform the necessary functions in  
13 his absence?

14 MAYOR McKELDIN: Well, it might be all right,  
15 but I don't think it is important whether we do or not.

16 MR. MILLER: You don't think so?

17 MAYOR McKELDIN: No.

18 JUDGE ADKINS: Mrs. Freedlander.

19 MRS. FREEDLANDER: Mr. Mayor, when Governor  
20 Tawes was presented with two reapportionment bills, he  
21 pled for the constitutional right, or statutory, whatever



1 it is, to seek the advisory opinion of the Court of Appeals.  
2 Do you think the Governor of Maryland should have that  
3 right, that there should be a provision to allow him to  
4 seek an advisory opinion from the Court of Appeals?

5 MAYOR McKELDIN: I think a lawyer could answer  
6 that, I mean a practicing lawyer, pardon me, a practicing  
7 lawyer, a great lawyer such as you have here as Chairman  
8 of this Commission can answer that much better than I  
9 could. I don't know, I don't know.

10 Of course, he has excellent talent available  
11 to him. There isn't a lawyer in this State, or there isn't  
12 a law firm in this State who wouldn't gladly, without  
13 charge, give him an opinion on that subject, and I should  
14 think that the Court of Appeals would be reluctant about  
15 doing that, be reluctant about having that in the Consti-  
16 tution.

17 JUDGE ADKINS: Mrs. Bothe.

18 MRS. BOTHE: Mr. Mayor, do you feel that the  
19 Adjutant General need be a constitutional office as it now  
20 is?

21 MAYOR McKELDIN: Yes, I think so. I think it



1 is a great tradition in this State, and he has a very im-  
2 portant function, I think. When I entertained the Queen  
3 of England, when I entertained the Queen Mother of Eng-  
4 land and the King and Queen of Greece, it is awfully nice  
5 to have the Adjutant General there. It is my feeling that  
6 we don't have enough ceremonial traditions in our democra-  
7 cy, and I think we should have it, I like the color.

8 JUDGE ADKINS: Governor, I should like to ask  
9 you a question relating to the activity of another com-  
10 mittee. There is some discussion going on at the Local  
11 Government Committee of this Commission relative to the  
12 abolition of counties and the making of a provision for the  
13 creation of regional districts.

14 Would you have any -- with that little bit of  
15 background, would you have any comment to make?

16 It obviously, of course, is an attempt to meet  
17 the problems you are experiencing both here and in Metro-  
18 politan Washington with the overlapping of governmental  
19 functions within county lines, and there is some discussion  
20 going on as to whether or not we should provide in the Con-  
21 stitution either for an abolishment of the existing county





1 lines and for the creation of urban or regional districts.  
2 Would you have any thought as to whether or not that  
3 approach should be a constitutional matter?

4 MAYOR MCKELDIN: No, I don't, but I think it  
5 is very important.

6 I think some place somewhere we should have  
7 some provision that would enable such action as that to  
8 take place, because it is becoming a very serious problem,  
9 as I say.

10 In Baltimore City, we are not in a county, as  
11 you know, and we have problems with Baltimore County on  
12 the north and Anne Arundel County on the south.

13 If we could have some kind of a metropolitan  
14 government, it would be greater to the advantage of both  
15 the counties and the City of Baltimore.

16 JUDGE ADKINS: Do you think it would be realis-  
17 tic to provide machinery by which voters in each of the  
18 respective present subdivisions could vote to join together  
19 in a metropolitan unit, would that be realistic?

20 MAYOR MCKELDIN: It would be very desirable  
21 so far as I am concerned if you could work out something



1 that would meet with their approval. I think you would  
2 be doing a great service to the State, yes.

3 MR.ENEY: Well, if you didn't abolish coun-  
4 ties and the City of Baltimore and their separate political  
5 subdivisions but created some form of metropolitan auth-  
6 ority for the Baltimore City area embracing Baltimore City,  
7 Baltimore County, part of Harford County or all of it,  
8 Howard County and Anne Arundel County, would you favor  
9 giving such a metropolitan authority full power or merely  
10 advisory power?

11 MAYOR McKELDIN: Of course, that's a very  
12 broad question that I couldn't answer right off, but in  
13 principle, I would be in favor of that. It would have to  
14 be worked out, but in principle, I would be in favor of  
15 that. I think there should be such an authority that could  
16 embrace them and have a like a county government over five  
17 or six of us. I think it would be much better for us.

18 JUDGE ADKINS: Which would replace the existing

19 MAYOR McKELDIN: County governments.

20 JUDGE ADKINS: -- County and City governments.

21 MAYOR McKELDIN: No, it wouldn't replace them,



1 you see, but it would act as, I think it would act as  
2 kind of a county government over all of them, have the  
3 Mayor of Baltimore, have your County Commissioners, but  
4 have --

5 JUDGE ADKINS: A supervisor.

6 MAYOR McKELDIN: A supervisor.

7 JUDGE ADKINS: In other words, interpose  
8 another governmental step?

9 MAYOR McKELDIN: Yes.

10 MR. SAYRE: And another tax structure?

11 MAYOR McKELDIN: Yes.

12 MR. ENEY: Something akin to New York City with  
13 its five boroughs?

14 MAYOR McKELDIN: Yes, yes. It is not possible  
15 for us to impose a sales tax because you can go across the  
16 line into Baltimore County, and they can't do it because  
17 they can come in here, but if we -- together we could solve  
18 a lot of our financial problems that we can't solve right  
19 now.

20 MR. SAYRE: Would you have any objection to  
21 such a super-body taking away the County or City tax auth-





1 ority and only granting to them taxes, like a little  
2 community that is incorporated, if it wants to have a one  
3 per cent tax or something and so forth, it could do so,  
4 but it would seem to me that you could get more efficient  
5 use of funds if you only had one major , taxing body for  
6 local government.

7 MAYOR McKELDIN: Yes, I would be in favor of  
8 that, but that would be very difficult of accomplishment  
9 as a practical matter.

10 MR. ENEY: If you had some sort of super-metro-  
11 politan authority such as we have been talking about, do  
12 you think it would be feasible to confer on it regulatory  
13 powers but not taxing powers, or would you have to have  
14 taxing powers in order to make it function?

15 MAYOR McKELDIN: I think you would have to  
16 have taxing powers to make it function. If you don't have  
17 taxing powers, I think it would lose much of its effective-  
18 ness.

19 That is our problem now, the taxing problems,  
20 and we have a metropolitan commission that we are working  
21 on now, and we are having difficulty even with an incinerator



1 Baltimore County wants to build an incinerator for us and  
2 we want to build it for ourselves.

3 Now, if we had this form of government that  
4 you describe, it would save us all a lot of money.

5 JUDGE ADKINS: Would you take away from the  
6 existing structure, the existing governmental structure,  
7 any of its present taxing powers if you were to create  
8 taxing powers in this super-government that we are talk-  
9 ing about, or would you leave it and just simply impose  
10 new taxing powers on the existing status quo?

11 MAYOR McKELDIN: Well, if you impose new tax-  
12 ing on the status quo, you wouldn't need, of course, the  
13 taxes that we are leveling at the City level, so you wouldn't  
14 have to disturb those taxes, they would take care of them-  
15 selves, naturally. In other words, you wouldn't need as  
16 much money from the people in the City if you got the other  
17 money from an authority, a buffer.

18 JUDGE ADKINS: Does any other member of the  
19 Committee have any further questions of Mayor McKeldin?  
20 Mr. Eney, do you have any more?

21 MR. ENEY: No.



1 JUDGE ADKINS: Mr. Lane?

2 MR. SAYRE: This is a bit of an esoteric  
3 question, but have you felt the leadership abilities of  
4 the Governor have been restricted, that's number one?

5 MAYOR McKELDIN: By the law?

6 MR. SAYRE: By the law.

7 MAYOR McKELDIN: I don't think so.

8 MR. SAYRE: Do you think that there would be  
9 any feasibility in giving the Governor the authority to  
10 initiate by referendum -- well, actually it would be the  
11 Governor's right to initiate by referendum something that  
12 passed a majority of a House and Senate Committee, but  
13 failed passage in one or both Houses; do you think that  
14 he should have such authority to call that out to plebiscite  
15 so to speak?

16 MAYOR McKELDIN: I wouldn't think so. I think  
17 somebody may have the authority to do that other than the  
18 Governor, but I don't think I would give it to the Governor.  
19 Give it to any citizens who want to get up a petition for  
20 a certain amount, and call for one, but I don't think it  
21 should be in the hands of the Governor.





1 JUDGE ADKINS: Dr. Bard.

2 DR. BARD: Governor, your presence today gives  
3 us an unusual advantage in that you have been Governor  
4 of the State of Maryland on two occasions now and Mayor on  
5 two occasions, and so my question, in a sense, is directed  
6 to you in terms of these dual experiences which you have  
7 had. Article 11-A deals with Home Rule and local legis-  
8 lation. To your mind, might the provisions in respect to  
9 Charter Home Rule be extended in order to give a community  
10 like Baltimore City more Home Rule than it now secures?  
11 An illustration of that would be the requirement to be  
12 secured from the Legislature in order to float a loan, let  
13 us say.

14 MAYOR McKELDIN: Yes. Of course, that's a  
15 terrible thing, of course, that Baltimore should subject  
16 itself to that, but yet we never get it. The members of  
17 the Baltimore delegation under Democrats and Republicans,  
18 they just won't give it to us. The counties have it, but  
19 we don't have it, and we try every year to get it, and we  
20 are trying this time, and I don't know whether we are going  
21 to get it or not, but before we can float a loan, we have



1 to get the Legislature to give us the authority to put it  
2 on the ballot, and, first of all, I mean with a loan, it  
3 has got to be approved first by the Planning Commission  
4 in Baltimore, then it has got to be approved by the City  
5 Council of Baltimore, then it has got to be approved by  
6 the Legislature in Annapolis, then it has to come back and  
7 be put on the ballot. Before it can be put on the ballot,  
8 it has to be approved again by the Planning Commission,  
9 before it can be put on the ballot, it has to be approved  
10 by the City Council. After it is approved by the City  
11 Council and put on the ballot, then it has to be approved  
12 by the people, and it is just a mistake, and I mean I think  
13 the Governor ought to use his influence to do what he can.  
14 When I was Governor, I did, but I didn't have enough influ-  
15 ence.

16 JUDGE ADKINS: I take it, then, if the Con-  
17 stitutional Convention elected to give you this authority  
18 that Dr. Bard speaks about, you would be very happy to re-  
19 ceive it?

20 MAYOR MCKELDIN: Oh, yes, we ought to have it,  
21 we just ought to have it. It is a matter of politics, and



1 I understand it, so I don't get worried about it because  
2 I have been in the business, and they want to keep control  
3 of the boys in the City Council, the members of the Legis-  
4 lature, so that's it; it is a peculiar reason, but that's  
5 it.

6 JUDGE ADKINS: Well, Governor, apparently we  
7 have, or Mr. Mayor, apparently we have exhausted our  
8 questions.

9 We very much appreciate your taking time to  
10 help us out. If you have any other thoughts, we would be  
11 very happy to receive them now even, or at any time in  
12 the future.

13 MAYOR McKELDIN: Take the Governor's salary  
14 out of the Constitution, let me conclude with that.

15 JUDGE ADKINS: I think we all agree, at least  
16 the sub-committee, that this ought to be done.

17 MAYOR McKELDIN: No governor would put it on  
18 the ballot. Being a Republican, I knew I couldn't be  
19 elected again. I put it on the ballot but I fooled myself,  
20 and I was elected, and it passed, they still kept it in the  
21 Constitution, and increased the salary to 15,000 which, of





1 course, is not enough. The Mayor of Baltimore gets  
2 25,000, the Governor gets 15,000.

3 JUDGE ADKINS: What do you think would be a  
4 reasonable gubernatorial salary in the current scene?

5 MAYOR McKELDIN: \$35,000.

6 MRS. BOTHE: Do you think, Mayor McKeldin,  
7 instead of putting a dollar figure in the Constitution,  
8 or a minimum dollar figure, that it might be tied to the  
9 salary of some other official, say the Governor must make  
10 at least as much as the Chief Judge of the Court of Appeals,  
11 or some other office, so that in case inflation continues,  
12 the Constitution will remain realistic?

13 MAYOR McKELDIN: It should not be in the Con-  
14 stitution and nobody should be compared to the Chief Execu-  
15 tive of the State of Maryland.

16 MRS. BOTHE: You would have a minimum salary,  
17 but not a maximum.

18 MAYOR McKELDIN: No, no.

19 MRS. BOTHE: You would take it out entirely?

20 MAYOR McKELDIN: No, I wouldn't have a minimum  
21 or a maximum. I would just let the Legislature decide.



1           MRS. BOTHE: But you don't feel there is any  
2 necessity for a safeguard in case the Legislature should  
3 decide to do away with the Governor's salary?

4           MAYOR McKELDIN: Being a Republican --

5           MRS. BOTHE: A Democratic Legislature.

6           MAYOR McKELDIN: I think there should be a  
7 safeguard, being a Republican, the Legislature will always  
8 be Democratic for the next 100 years, but it might be nice  
9 to have a safeguard in there for us people every twenty  
10 years when we get elected.

11           MR. ENEY: Mr. Mayor, thank you very, very  
12 much.

13           JUDGE ADKINS: Thank you very much.

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3 CONSTITUTIONAL CONVENTION COMMISSION  
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8 Meeting of Committee on Executive  
9 Department with Former Governor William  
10 Preston Lane, Jr. was held on Thursday,  
11 February 24, 1966, at 11:45 a.m., Eastern  
12 Standard Time, at Room 801, State Office  
13 Building, Baltimore, Maryland.  
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19

20 Reported by:  
21 M. Wasserman



1     COMMITTEE MEMBERS PRESENT:

2                     Honorable E. Dale Adkins, Jr.,  
3                     Chairman

4                     Calhoun Bond, Esquire  
5                     Mrs. Elsbeth Levy Bothe  
6                     Charles Mindel, Esquire  
7                     Mr. E. Phillip Sayre  
8                     Mr. Garrett Power  
9                     Ernest N. Cory, Jr., Esquire

10     ALSO PRESENT:

11                     H. Vernon Eney, Esquire,  
12                     Commission Chairman

13                     John C. Brooks, Esquire,  
14                     Executive Director of the Commission

15                     Mrs. Maurice P. Freedlander  
16                     Edward T. Miller, Esquire  
17                     Dr. Harry Bard

18                     -----

19                     JUDGE ADKINS: We promised Governor Lane that  
20                     he could be excused as promptly as possible since he has  
21                     to be out in Reisterstown, I believe, at 1 o'clock.

22                     Governor, I think if it is agreeable with you,  
23                     if you would just undertake to go right down the list of  
24                     questions, and then perhaps if there is any time left, we  
25                     will ask you our questions at the conclusion of your com-  
26                     ments.



1 GOVERNOR LANE: Well, the first is, I have no  
2 prepared statement to make in an overall presentation  
3 except to call to your attention the fact that I feel  
4 slightly disqualified because my experience -- there has  
5 been a longer gap since I was occupied as Governor, for  
6 one thing, and I discontinued the practice of law when I  
7 went to Annapolis, because I didn't think a practicing  
8 lawyer should be Governor of the State. Maybe it wouldn't  
9 be a conflict of interests, but it would be undesirable.

10 I have some thoughts about the questions,  
11 though, that the Committee has asked, and the first is the  
12 limitation of Governor to two terms, consecutive terms.  
13 The change in that was done in my administration in 1947.  
14 I was prompted to do it by some persuasion, but chiefly  
15 because of the language of Article 34 of the Declaration  
16 of Rights which implements it into the statute law, the law  
17 of our State. I still think it should be limited for two  
18 reasons. I think one term is not enough, two terms should  
19 be reasonably sufficient.

20 It would take four years for a sitting governor  
21 to get more information about what his job is going to be





1 than he had while he was running, and, secondly, it would  
2 give him another term in order to implement what he fur-  
3 ther made up his mind to try to do.

4 I think it used to be that the President of  
5 the United States was once limited to two terms. Now, I  
6 think that is sufficient.

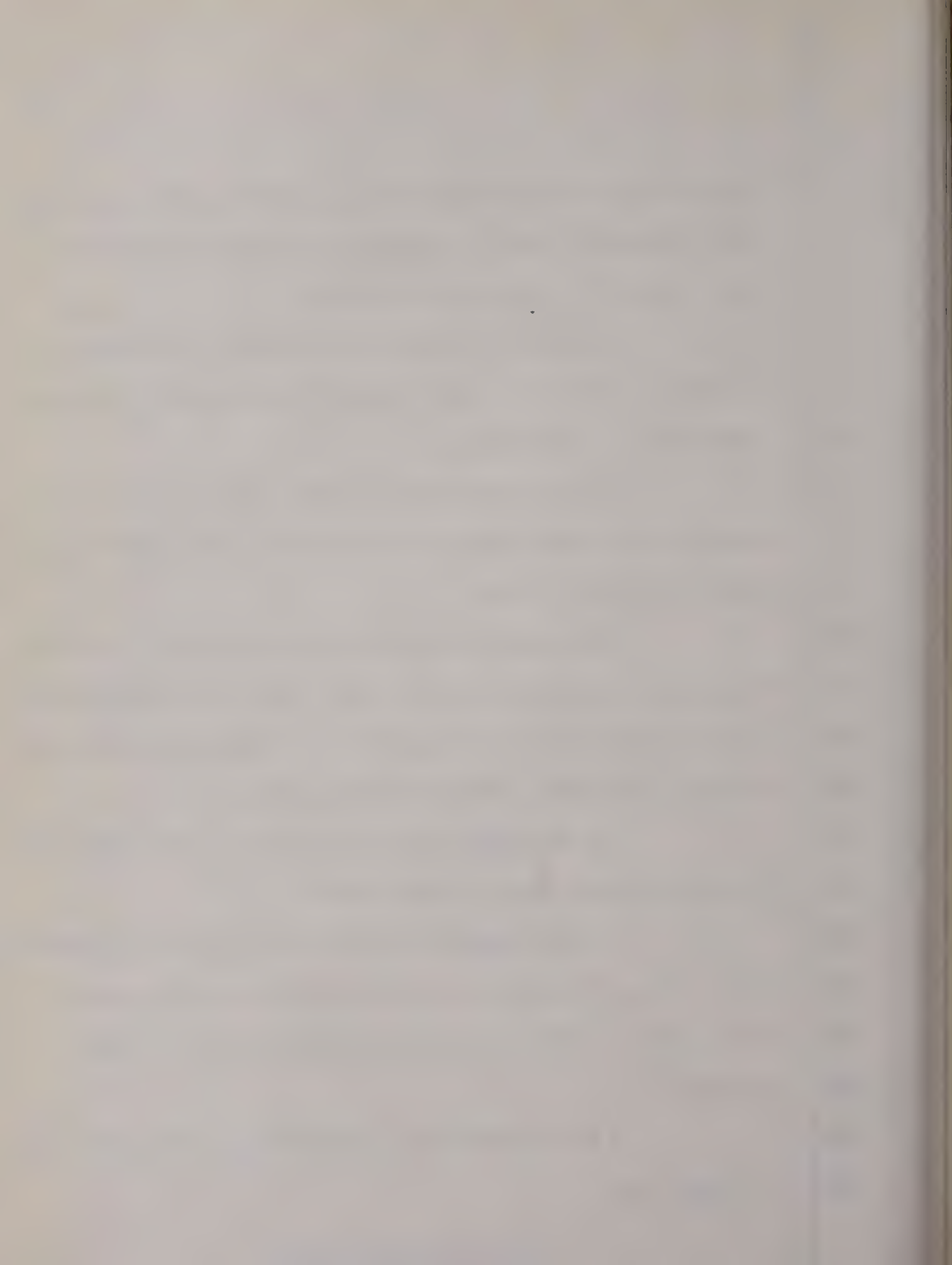
7 If he hasn't been a good governor and if the  
8 people of the State are not inclined to agree with them,  
9 they can get rid of him.

10 Sometimes he has built up a political machine  
11 that becomes a dynasty, and I don't think that the public  
12 and the State should be exposed to a situation continuing  
13 to which they have substantial objection.

14 He can come back another time, and I think that  
15 is true in some of the other states.

16 I don't know about Ohio, but Governor Schrickett  
17 was a very good governor of Ohio and he came back two or  
18 three times, I think, because he had been such a good  
19 governor.

20 I definitely feel the same way I did some twen-  
21 ty years ago.



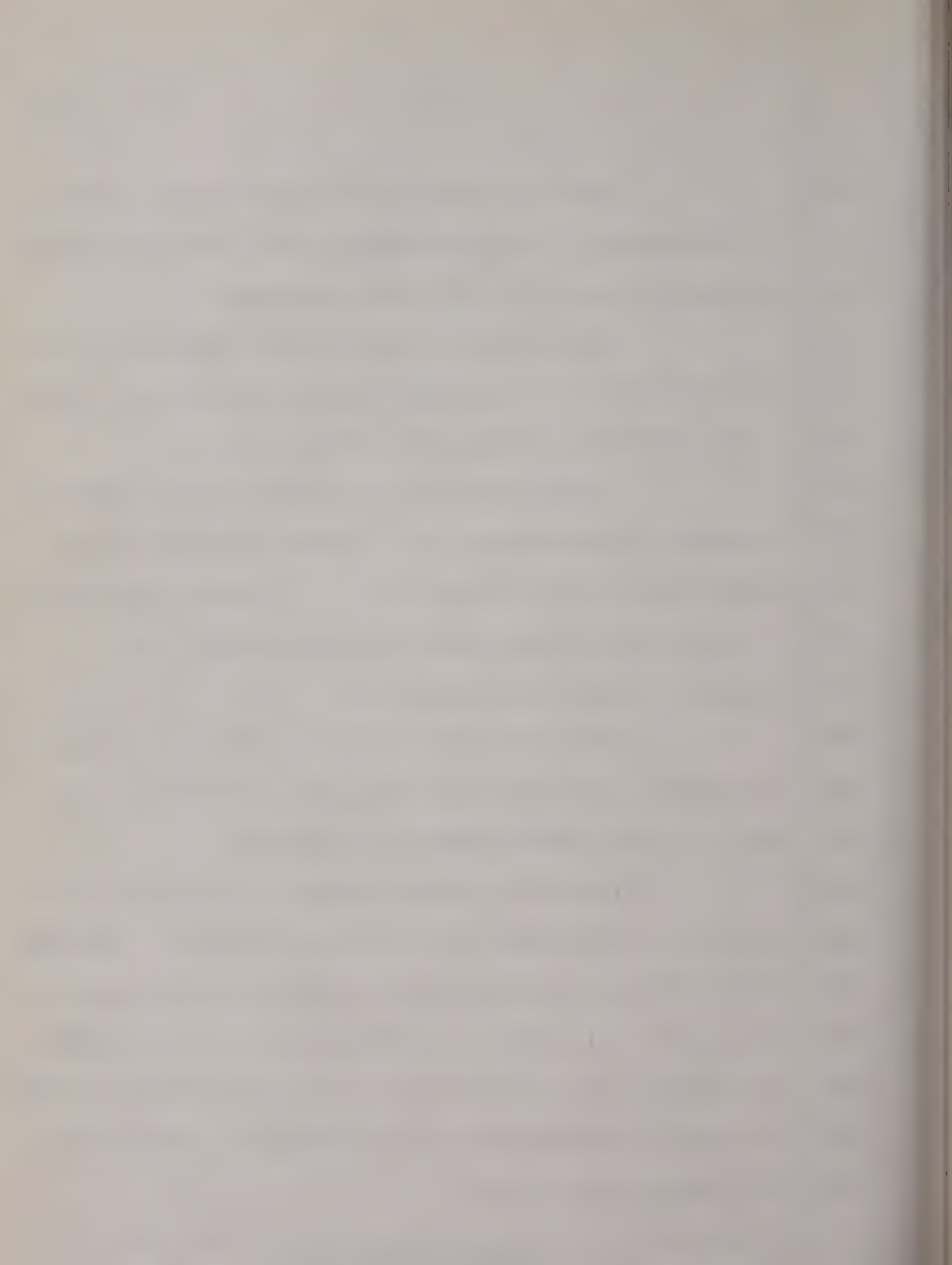
1           Should the Constitution provide for a method  
2 of succession to the governorship in the event of physical  
3 or mental incapacity of the Chief Executive?

4           Yes, I think it should, but I think that that  
5 is nailed down in the proposal or suggestion about a lieu-  
6 tenant governor. I can answer those together.

7           I think that the lieutenant governor should be  
8 elected when the Governor is. I don't think that it is  
9 necessary to elect a Comptroller. I rather am persuaded  
10 to the idea that that should be the province of the  
11 Governor to make that appointment.

12           Once we had to vote on the Clerk of the Court  
13 of Appeals, and I have never been able to understand the  
14 wisdom, constitutional wisdom of doing that.

15           The virtue in not changing the election of the  
16 Governor to when there is no election of Federal officials  
17 is that it is a tax-saving device, and I see no reason to  
18 change that. In addition to that, it is usual that there  
19 is a bigger vote in the combined election by people turning  
20 out and you therefore get a more widespread expression of  
21 the people in the State.



1           Should the Governor take office sooner than  
2 the fourth Wednesday in January so that he can assume res-  
3 ponsibility for the budget preparation for the next  
4 legislative session?

5           He does, anyhow. He has got to do it. The  
6 election is in November, and it might be that he needs,  
7 after a hard campaign, a brief rest, but I think the ex-  
8 perience that has been expressed by Governor Tawes and  
9 also by Mayor McKeldin, that has been our history, and I  
10 see no need to change that, to advance it.

11           I don't think we are taking any risks when I  
12 recollect the time I started on the preparation of the  
13 budget and the accommodation that was given to me in order  
14 to get a difficult and a torturous task done, and in ad-  
15 dition to that, he has got to see a lot of people who at  
16 times demand to see him, no matter what the subject of the  
17 discussion might be.

18           I don't think that the time of the Governor  
19 going into office should be changed. As you may recall,  
20 when I ran in 1946, Governor O'Connor was elected to the  
21 Senate, and he had to go to swear in in the Senate at the



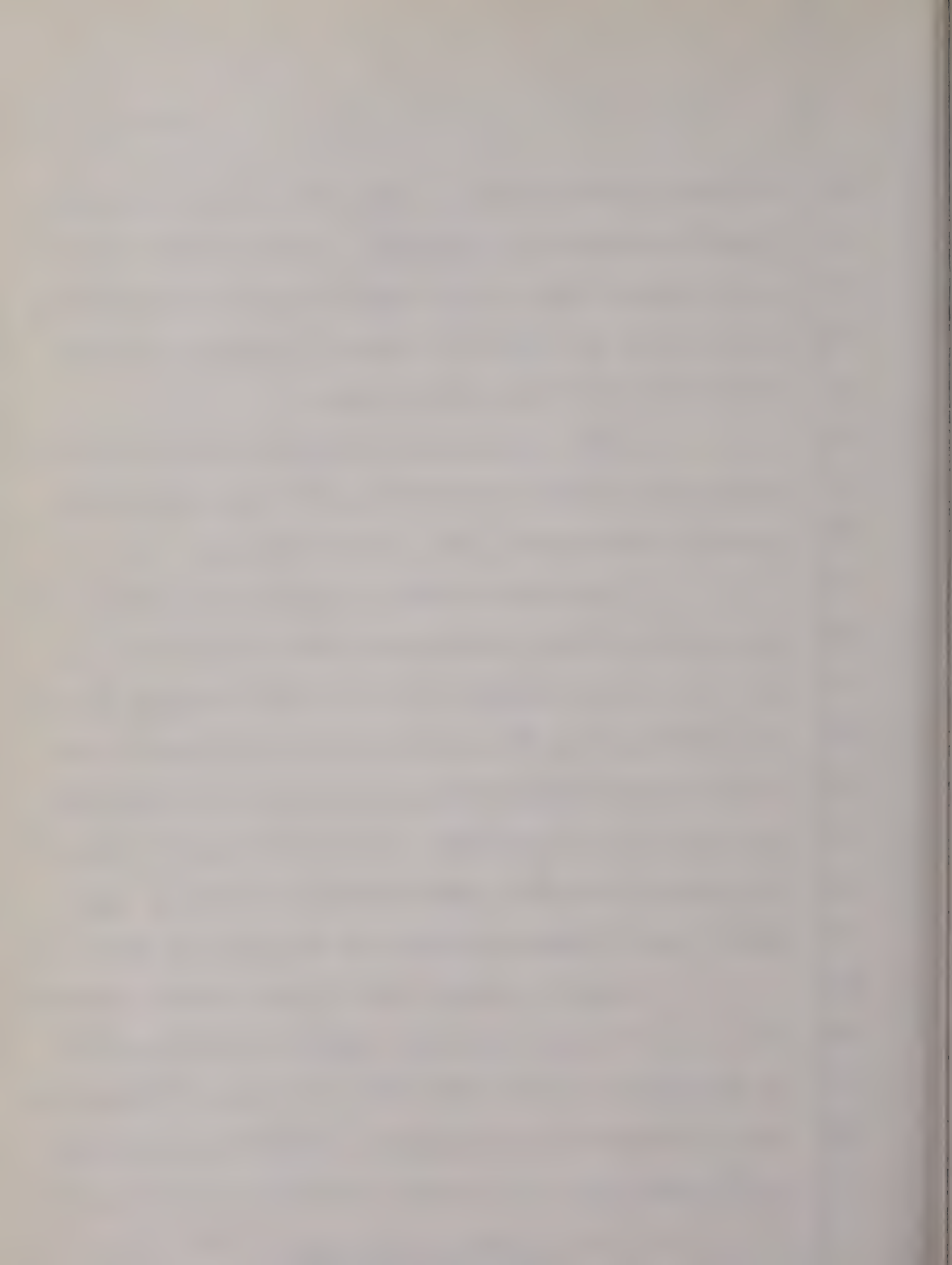


1 beginning of their term in order not to get out of posi-  
2 tion with relation to seniority, so technically I have  
3 been Governor twice. The Legislature promptly elected me  
4 Governor for the interim of about six, or seven or nine  
5 days, and then I was sworn in again.

6 With reference to the administrative structure  
7 of the State being reorganized so as to concentrate more  
8 power on the Governor, yes, in some respects.

9 I am not qualified to say what the restrictions  
10 or the limitations, the detailed limitations should be,  
11 but to put it in the vernacular, the one who takes the rap  
12 for anything being done in the end is the Governor, and I  
13 think that he deserves that protection in the management  
14 of the Executive Department, and I think that the power of  
15 the Governor should be expanded with necessary or appro-  
16 priate restrictions to let him run his own department.

17 Now, the danger might be that you get something  
18 like a czar in there, too deep a political leader, and  
19 it should have in its application some form of restriction,  
20 but his hands should be loosened a little bit to run what  
21 he is responsible for, and the only way he can do it, that



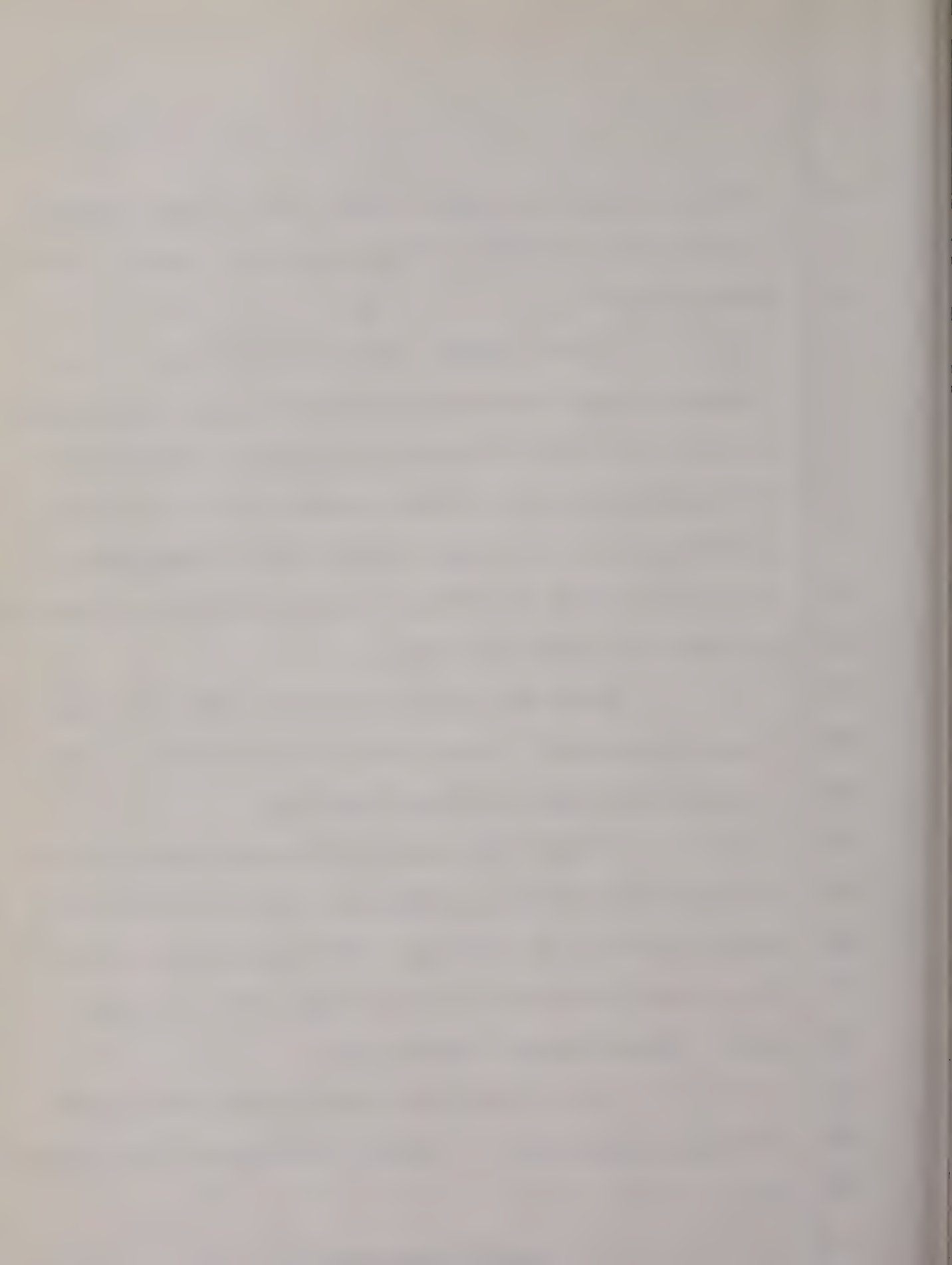
1 reflects on the advice that he has, and it also reflects  
2 a little bit on whether or not he can fire someone that he  
3 has appointed.

4 I don't recall any individual, and if I did  
5 I wouldn't name them because this isn't a personal matter,  
6 but there can arise times when persons that the Governor  
7 has appointed get out of hand, usually with an extent of  
8 publicity, and the Governor ought to have a background of  
9 some control over recalcitrant individuals that get vicious  
10 and you can't get rid of them.

11 I had very little experience with that while  
12 I was in Annapolis. I can recall on two, and it wouldn't  
13 be appropriate now to say who they were.

14 I don't think that the Governor should be the  
15 only popularly executive official. I have already said I  
16 would be in favor of electing a lieutenant governor, so that  
17 he at least can learn to know the job, what it is all  
18 about, without coming in brand new.

19 I don't think that there is any necessity for  
20 electing a Comptroller. I think the Governor should appoint  
21 him.





1 I think he should also appoint the Treasurer.  
2 It is now by the Legislature, but I think as Mayor McKeldin  
3 said, we are fortunate in having had highly qualified  
4 Treasurers, and he didn't put it in this language, but the  
5 new Governor, the incoming Governor, has to exert enough  
6 persuasive power over the Legislature; if he complied or on  
7 a political basis he would never be able to appoint a  
8 Republican Treasurer, but we are fortunate in having the  
9 type and kind of people that we have had over the years.  
10 I don't see much sense in having the Legislature elect  
11 the Treasurer. The Treasurer is more responsible to the  
12 Governor than he is to the Legislature.

13 I think you could give them the right, with the  
14 advice and the consent of the Senate. That's purely a  
15 detail. If he is a good man, with the Governor's power  
16 of persuasion, he is going to be okayed as a practical mat-  
17 ter, and it doesn't need to get into the Constitution.

18 Should the heads of all administrative depart-  
19 ments serve at the will of the Governor?

20 Well, as I indicated more in detail my exper-  
21 ience, I never had much trouble, but there are times, only





1 two that I can recall, but I think that the Governor is  
2 entitled to more freedom of selection than in some detailed  
3 respects he has had, and I think that he should have,  
4 within reason, a better opportunity to get rid of them, if  
5 there is some shadow or otherwise. You have got to call  
6 them in and try them, and you will have a public circus.  
7 It is vicious and there is contamination of the individual,  
8 and the contamination of the individual shouldn't be neces-  
9 sary in order to get rid of an infrequently objectionable  
10 official who in the end owes some type of loyalty. If he  
11 is unwilling to risk a vicious attack, then I think the  
12 obligation is on him to resign and get out, but the  
13 Governor in that respect, I think, needs some protection,  
14 but it is very vague and occurs only infrequently.

15 Should the heads of all administrative depart-  
16 ments serve at the will of the Governor?

17 Yes, I think they should.

18 He should be given, maybe some restriction  
19 should be put on that in order to keep maybe the Governor  
20 from getting out of hand at times. The Governor is less  
21 apt to get out of hand, though, than the individual, the



1 other individual because the Governor is the one that can't  
2 be relieved unless he is impeached. That hasn't happened.  
3 I don't anticipate actions of that kind in the future.

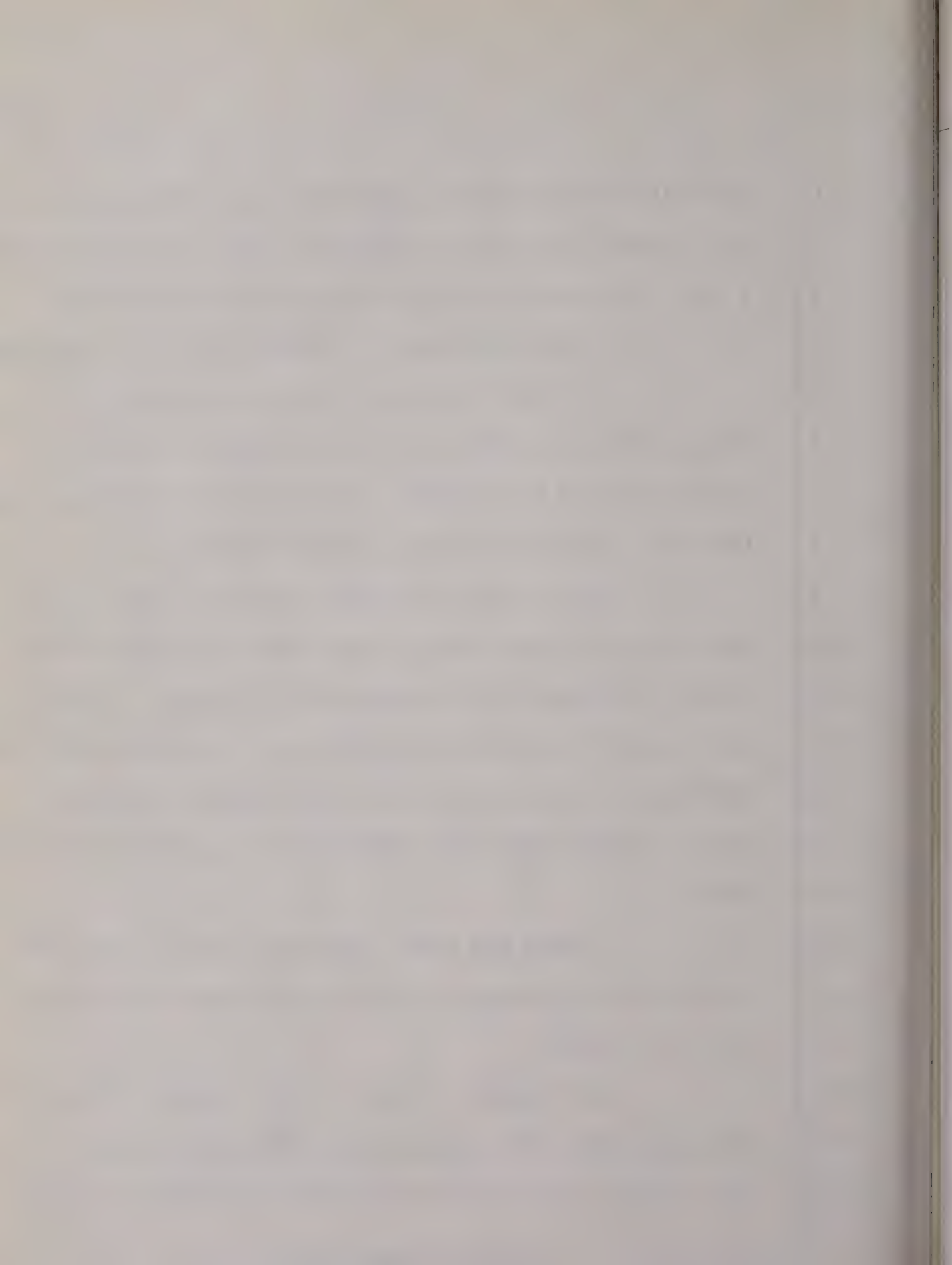
4 Should the Board of Public Works be reorganized?

5 I think there is a virtue in the Board of  
6 Public Works, but after listening to Governor Tawes, I  
7 think it should be revamped. It has served a function in  
8 the past, at least during my term of office.

9 Now, listening to him, which is a more recent  
10 experience, he says they are just loaded with the discus-  
11 sions and decisions of inconsequential matters. I think,  
12 and I would recommend this suggestion, that you accept the  
13 thinking on that from Governor Tawes who has the most  
14 recent exposure than you would without any further comment  
15 from me.

16 Should the Merit System for appointments and  
17 promotions be extended to all State employees other than  
18 department heads?

19 My opinion on that is very limited. If you  
20 have got people that are good, you want to keep them.  
21 That clashes a bit with the power of the Governor insofar



1 as the people he appoints are concerned.

2 Certainly, the Merit System should be preserved  
3 in its structure because they need protection in the hold-  
4 ing of their jobs. Their protection has worked in the past,  
5 and certainly no serious complaints about it have been  
6 called to my attention, and I wouldn't be qualified per-  
7 sonally to comment on that either.

8 Should the Governor be given the power to alter  
9 the functions of the administrative departments to the  
10 extent necessary for efficient administration?

11 I think he should, but so long as he doesn't  
12 in doing that, violate any law that has been passed by  
13 the Legislature for the regulation. I would say otherwise  
14 you would put the Governor up in the position of doing  
15 whatever he pleases, and that could be handled by any res-  
16 trictions on revamping that the Legislature has tied down,  
17 and it oughtn't to go beyond that. What authority the  
18 Legislature has done in particular instances should be  
19 continued, and I think about the people that have served,  
20 well, our prison setup for one, how essential it is to  
21 have people that are qualified and who conduct themselves





1 in a proper way. It is certainly for their protection.  
2 He shouldn't, in doing that, be permitted to ignore any  
3 existing law that the Legislature has produced or that they  
4 may pass in the future, but the control of that, I think,  
5 should, to that extent, remain with the Legislature, in  
6 case the Governor gets out of hand.

7 Should the Governor have the power to require  
8 administrative departments to furnish him with information?

9 That goes without saying.

10 What powers does the Governor need to fulfill  
11 his functions as preparer of the budget?

12 I would let him alone. There isn't anything  
13 I feel more strongly about than that. Otherwise, he would  
14 be running around in a circle, and I think in my experience  
15 insofar as the budget is concerned, there is some unusual  
16 language with reference to education.

17 Maybe I shouldn't say this, but I will. The  
18 only way at times I was able to balance the budget because  
19 of the size of the budget for the educational setup, which  
20 Tom Pullen was getting the most amount of money -- now,  
21 you have, true enough, Jim Rennie, and so forth, and his



1 function is -- he is a fighter, he argues because his  
2 instructions are to cut the budget down, and that produces  
3 fights and, therefore, people whose budgets he trims are  
4 personally antagonistic to him because of the quarrels  
5 they have had, and the only way that I could once or twice  
6 get the budget balanced was to have personal conversation  
7 with Tom Pullen, and I know one occasion that -- because  
8 that's where the biggest amount of money was -- I said,  
9 Tom, I am in trouble. So he said, That's unfortunate,  
10 any way I can help you, and that was an unfortunate thing  
11 for him to say, and I was short about a million and a  
12 quarter dollars, and I had given stern directions to the  
13 Budget Director, and I said, Look, I am a little short, and  
14 well, I said, Is there any way you can help me out, and I  
15 said, Take four or five days and think it over, and he came  
16 back, and he said, I figure I can raise, get you 750,000,  
17 and I said, I am sorry, take a few more days, the deficit  
18 is a million and a quarter. He got it.

19 Now, those are the things, the kind of things  
20 you have to do in order to come out without having a donny-  
21 brook, sometimes you have got to handle things that way,





1 but they have got to be good friends of yours, otherwise  
2 you won't succeed. I don't know why I said all that.

3 Should the Governor have the power to dele-  
4 gate his powers of executive clemency?

5 No, he gets advice instead, and it is usual  
6 to talk, as Governor Tawes and Mayor McKeldin have said,  
7 he talks to judges, he talks to almost everybody he can  
8 in order to inform himself with the information he needs  
9 for the exercise of it, and if it should be spread around  
10 in various places, well, you run the risk of getting in a  
11 mess. I think the Governor should accept that responsi-  
12 bility no matter how he works it out, and I would depend  
13 on him to work it out in a creditable way, but I think  
14 there is a danger in spreading it around too much.

15 Should the Governor have the power to grant a  
16 nolle prosequi?

17 I never heard of it before I read the Consti-  
18 tution, and I had no participation in any activity under  
19 it, and I think it should be deleted as a dead letter.

20 Should the Governor have a veto power?

21 Of course.





1                   Should a 3/5 vote of the Legislature be able  
2 to override a veto?

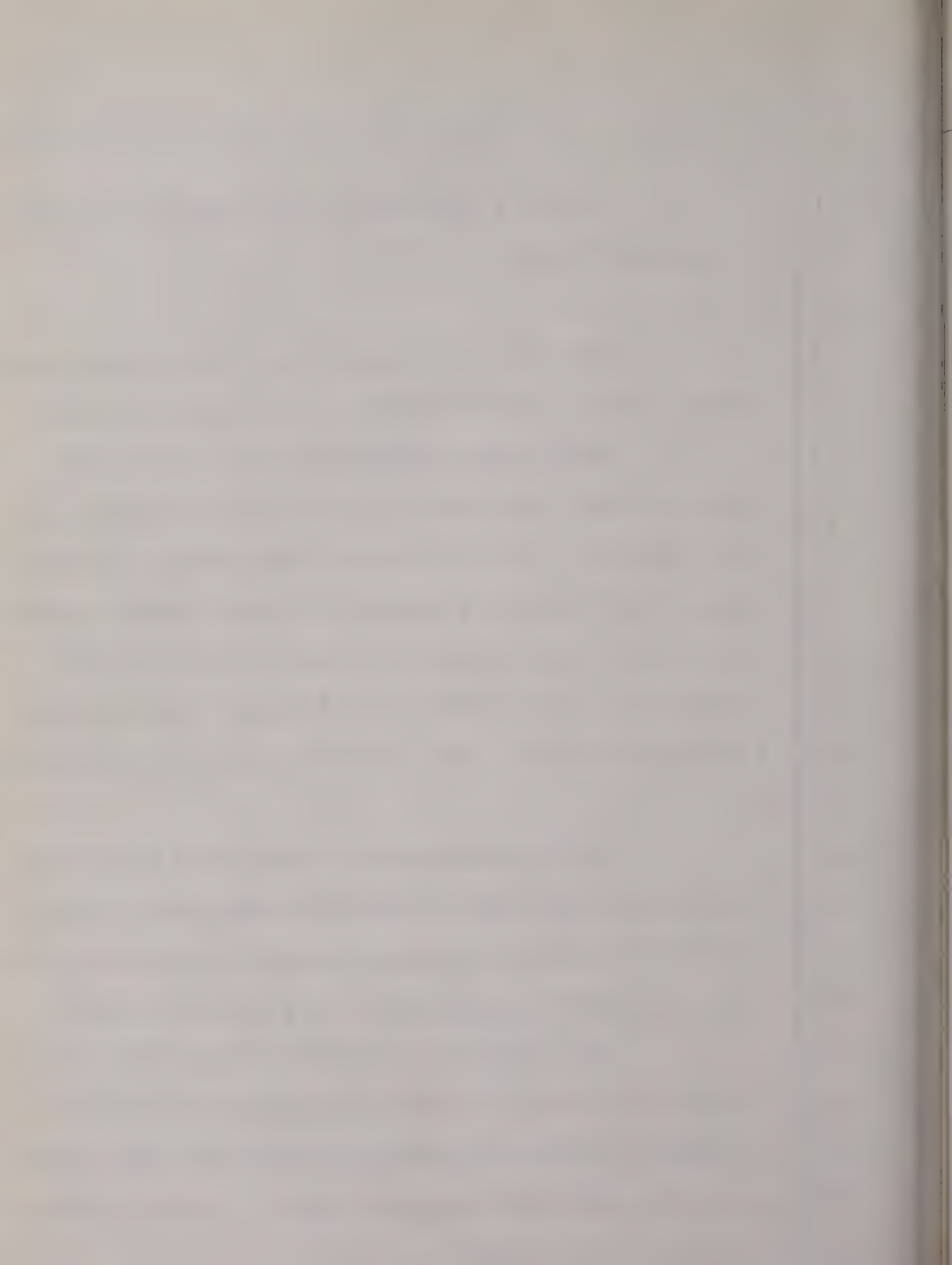
3                   Yes.

4                   Does the six-day period give the Governor suf-  
5 ficient time to consider whether or not to veto a bill?

6                   Well, Mayor McKeldin said No, and Governor  
7 Tawes said Yes, and that is only because of a system that  
8 they work out. It is the day that they present it to the  
9 Governor and they don't present it to the Governor because  
10 it is on its way through the Attorney General's office,  
11 so that gives him the elbow room he needs, but if it was  
12 a stricture to do it, then something ought to be done about  
13 it.

14                  Should the Governor's pocket veto be expanded  
15 so that bills that die by veto or by being left unsigned  
16 after the Legislature adjourns need not be returned at the  
17 next session of the Legislature for possible override?

18                  Well, that is sort of an academic kind of a  
19 question. It indicates lightly that the Governor isn't  
20 on the job on his obligations to say what he thinks and do,  
21 but on the other hand, they can start it all over again as



1 a new bill. To me it doesn't make any difference, but I  
2 do admit that six days with a stricture, with everything  
3 else he has to do, it is a stricture, it is a deadline,  
4 in other words, and the way it works out is, it is purely  
5 a question of how long the Attorney General keeps the  
6 bill because that is not presented to the Governor until  
7 he gets it from the Attorney General.

8 Should the Governor have an item veto?

9 Yes, but it should be restricted to the appro-  
10 priation bills.

11 JUDGE ADKINS: Thank you very much, sir.

12 Ladies and gentlemen, any questions? Mrs. Bothe.

13 MRS. BOTHE: When you were talking about your  
14 budget problems, Governor Lane, it occurred to me to ask  
15 you about Article 8, Section 3, which provides that the  
16 School Fund of the State shall be kept inviolate, and  
17 appropriated only to the purposes of Education. Do you  
18 feel that that is an advisable restriction on the budget  
19 powers of the State?

20 GOVERNOR LANE: It didn't make too much dif-  
21 ference to me because of my fraternity with Tom Pullen.



1           MRS. BOTHE: You don't feel that it had any  
2 practical effect one way or another?

3           GOVERNOR LANE: It is the kind of a situation  
4 that is often brought up as the possibility of a threat,  
5 and the question is a difficult one. Certainly, I think  
6 that the State should do its duty insofar as our education-  
7 al structure is concerned, but I don't think it should be  
8 restricted in that by some arbitrary individual. I think  
9 they need that protection so long as they don't run wild  
10 with it. I think this should be a judgment of a person  
11 who has the responsibility of the financial integrity of the  
12 State. Well, if something isn't done about it to appoint  
13 the way not arbitrarily from one side or another, then I  
14 think the only way you can possibly work it out is as I  
15 told you before, and that is one of the reasons why I dis-  
16 cussed my contact with the Superintendent of the schools.

17           MRS. BOTHE: You feel that he should continue  
18 to have this power over the budget, so to speak, to keep  
19 the School Fund inviolate and have to work with the Governor  
20 if a million or so is needed?

21           GOVERNOR LANE: It depends on who it is. If





1 it is used as threat, and picturing the State in financial  
2 stress, something has to give way, the schools should  
3 be last.

4 MRS. BOTHE: And you feel, then, that it  
5 should remain in the Constitution so that the schools will  
6 be last?

7 GOVERNOR LANE: I think it ought to be studied  
8 by this Committee, but I don't think that they ought to  
9 have an arbitrary stand one way or the other, but I think  
10 that the Education Department should be reasonable enough  
11 if the objection is raised automatically to be willing to  
12 try to straighten it out so it will be able to work in  
13 cases of emergency.

14 MR. BOND: Governor Lane, you, in discussing  
15 the removal of department heads and the power of the  
16 Governor to appoint, you said you had some reservation  
17 about a completely unrestricted power being vested in the  
18 Governor to remove and appoint.

19 Do you think that by making the various boards  
20 that are advisory that are connected with these departments,  
21 advisory boards, that that would be enough of a limitation



1 so that no Governor would ever act in an arbitrary manner  
2 on a removal or on an appointment? Do you think the ad-  
3 visory board would fill that function, in other words,  
4 the State Department of Welfare, the State Board became  
5 an advisory board; Mental Hygiene became an advisory board;  
6 Education became an advisory board, would those, would  
7 the existence of those boards act as the limitation that  
8 was bothering you that there should not be a complete un-  
9 restricted power in the Governor on the department heads?

10 GOVERNOR LANE: It depends on how it will work.  
11 I can't say Yes, because I am not convinced that that  
12 would be sufficient. I can't say No, because when you want  
13 to get rid of someone -- well, I had the problem once,  
14 and I won't name the department, it had a board of something  
15 like three members, and there was a division of opinion  
16 about how the thing should be run, and two of the members  
17 came down and sat with me four or five times to tell me  
18 their troubles, and they were down there about five or six  
19 times, and I called to their attention finally that they  
20 were a majority of that board, why didn't they straighten  
21 it out, I was only the Governor, and I said, I am now think-





1 ing about whether or not I ought to get rid of the whole  
2 board and get some people down there that will run it with-  
3 out bothering me with it. They didn't come back any more.

4 MR. BOND: Well, Governor, that is the point,  
5 I mean this is the thing that is concerning us. In other  
6 words, in many of the departments throughout the State  
7 now, there are boards, take Welfare, just the one I am con-  
8 nected with, we have a budget of 100 million dollars right  
9 now, it is a nine-man board, and the law vests the auth-  
10 ority for the administration of that department, not in  
11 the Governor, but in this board.

12 Now, I think I am coming around to the point  
13 of view that I think perhaps that is wrong because the  
14 board is part time, but assuming that all department heads,  
15 that all advisory boards and that all administrative  
16 boards became advisory, and assuming that all heads of  
17 departments served at the will of the Governor, I hear you  
18 saying that you want some sort of little restriction that  
19 you think might be advisable on the Governor, is that cor-  
20 rect or not?

21 GOVERNOR LANE: Maybe my first thought on that





1 was out of the top of my head. You said 100 million dol-  
2 lars, where does that money come from?

3 MR. BOND: It comes from Federal, State and  
4 local funds, sir. I would say about 60 per cent of it  
5 from the Federal Government, but it comes into the State  
6 and is allocated by this board.

7 GOVERNOR LANE: Yes.

8 MR. BOND: Of course, you have to deal with  
9 the Bureau of the Budget, too.

10 GOVERNOR LANE: Yes.

11 MR. BOND: And with the Governor, but still  
12 the administrative authority for that department is vested  
13 in the board which I am coming more and more to the con-  
14 clusion is wrong.

15 GOVERNOR LANE: Well, the State in a sense is  
16 concerned only by its contribution. I think the State  
17 should have to that extent which you indicated was what,  
18 40 per cent or --

19 MR. BOND: It is about 30 per cent, sir, and  
20 10 per cent local funds, depending on the program.

21 GOVERNOR LANE: 30 per cent less in authority,



1 and in its background, the Welfare Board is a Federal over-  
2 all project. I don't think that the Governor should have  
3 too much say about that because of the amount of money in-  
4 volved. I think it depends on who is Governor, and the  
5 question as to where he can get the money.

6 MR. BOND: Well, the funds come in from Wash-  
7 ington, sir, but they go through your line budget. It is  
8 an in and out proposition.

9 Then that rises to my next question, I won't  
10 belabor this any more. We have also been concerned about  
11 the Bureau of Budget and Mr. Rennie, and the other two  
12 gentlemen who preceded you definitely think it should be  
13 the Governor's budget and the Governor's administration.

14 I wonder, do you see any other answer than  
15 having a Mr. Rennie, or a Department of Budget who will  
16 be the Governor's tool in order to cooperate with all  
17 these various heads?

18 GOVERNOR LANE: No.

19 MR. BOND: Do you see any other way that that  
20 can be worked out?

21 GOVERNOR LANE: No, I don't see any practical



1 way. It is the Governor's responsibility in the present  
2 setup. I think the setup has worked well.

3 I am not talking about the current Legislature,  
4 but you have to protect yourself against a cross section  
5 of people that might go haywire, I mean that, and there  
6 has got to be a definite control. No public official  
7 necessarily of his own volition wants to limit the amount  
8 of money that he thinks he needs to do a good job, and you  
9 have got to have somebody around to tell him.

10 JUDGE ADKINS: Do the members of the Committee  
11 have any questions? Mr. Miller.

12 MR. MILLER: Governor, I understood that you --  
13 I would like to clarify one thing in your thinking. You  
14 spoke of believing it to be desirable for the Governor to  
15 be able to make reorganization plans with the various  
16 departments, but you sort of qualified it by saying, of  
17 course, it would have to be done with legislative authority.

18 Do you think that a plan somewhat like the  
19 Hoover Commission on the Federal basis where the Governor  
20 could submit a plan for reorganization and it would go into  
21 effect unless it was affirmatively turned down by the





1 Legislature at some appropriate deadline later would solve  
2 that problem? It would still give the Legislature a right  
3 to maintain the law as it had been passed, but it would  
4 also open the door so it wouldn't require an act of the  
5 Legislature to change the organization of some department.

6 GOVERNOR LANE: Well, what I was trying to say  
7 was that I think that there should be some check, and it  
8 would depend upon the importance of the change on the one  
9 hand, and I did say I think that it would depend upon not  
10 violating any existing law, because he would have to go  
11 back to the Legislature to have that area corrected, or  
12 any Act that the Legislature might pass thereafter where  
13 they didn't agree with what he had done.

14 MR. MILLER: Well, of course, if the Legisla-  
15 ture sets up a department, any change in it might be con-  
16 trary to law, but if the Constitution provided that the  
17 Governor in the interest of modernizing or bringing econ-  
18 omies in as was attempted and a very great deal accomplished  
19 by the Hoover Commission reports on the Federal basis, if  
20 the Governor had the authority to submit a reorganization  
21 plan and then it could be voted down by the Legislature,



1 but if they didn't do it within a certain period or a cer-  
2 tain percentage of the Legislature did not vote it down,  
3 it wouldn't stop progress, in other words.

4 GOVERNOR LANE: No, you are really answering  
5 your question so far as my thinking is concerned.

6 MR. MILLER: You wouldn't oppose such a power  
7 then, for the governors to submit it?

8 GOVERNOR LANE: No. What I was trying to say  
9 was that I didn't think that he should have an arbitrary  
10 and unlimited power to do that.

11 MR. MILLER: I agree, sir.

12 GOVERNOR LANE: Now, this is more how it could  
13 be accomplished.

14 JUDGE ADKINS: Governor Lane, I think in fair-  
15 ness to you, we are going to have to terminate the questions  
16 if you are going to keep your next appointment on time.  
17 Thank you very much for making yourself available.

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1                                    CONSTITUTIONAL CONVENTION COMMISSION

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4                                    Meeting of Committee on Judiciary Department

5                                    held Saturday, February 26, 1966, at 10 a.m., at the

6                                    University of Maryland School of Law, Baltimore,

7                                    Maryland.

8

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10

11                                  PRESENT:

12                                  Ridgely P. Melvin, Jr., Chairman

13                                  Robert J. Martineau, Secretary

14                                  Mrs. Elsbeth L. Bothe

15                                  Ernest N. Cory, Jr.

16

17

18

19

20                                  Reported by:

21                                  R.H.Brafman



1           THE CHAIRMAN: Mr. Winters, we are very  
2 grateful to you for meeting with us this morning. We  
3 apologize for the sparse attendance. I think it is  
4 sparse because of the short notice that we necessarily  
5 had to give to the rest of the members. Bob, I would  
6 appreciate it if you would formally introduce Mr.  
7 Winters to our Committee and the rest of the members  
8 of the Commission who are here.

9           MR. MARTINEAU: All right. Briefly, we are  
10 very pleased to have here this morning Glenn R. Winters,  
11 who is the Executive Director of the American Judicature  
12 Society and has been that for an excess of twenty-five  
13 years. In my opinion, at least, Mr. Winters is probably  
14 the outstanding authority in the entire United States  
15 on the question of the organization of the judiciary  
16 system and the various matters related to it, anything  
17 connected with the administration of justice. And Mr.  
18 Winters has been kind enough to accept an appointment as  
19 consultant to the Commission and, in particular, to be  
20 the consultant or a consultant to this Committee with  
21 respect to its deliberations concerning the organization





1 of the judicial system of the State of Maryland.

2 Now, Mr. Winters, first of all, I would like  
3 to ask you to describe just what the American Judicature  
4 Society is, so that people might have a little better  
5 idea of what it is and what its purpose is.

6 MR. WINTERS: Well, I thank you, first of  
7 all, for your very kind welcome. I fully appreciate  
8 that there was not very much advance notice, nobody  
9 knew about it, including myself, until a few days ago.  
10 And I am happy to have a chance to meet with you  
11 people. I have been familiar for a long time with many  
12 of those who are interested in the judiciary of Maryland  
13 and its improvement, and especially my friend Bob  
14 Martineau here, and I am delighted to have a chance to  
15 become more fully acquainted with what this Commission  
16 is doing. To ask me to speak about the American  
17 Judicature Society is in effect asking for the 60-second  
18 commercial. The Society is a national and international  
19 organization of lawyers, judges, and laymen. We have  
20 about 23,000 members in all states, and in several  
21 foreign countries. Our work is to publish a monthly



1 journal, conduct meetings, conferences, seminars and  
2 so forth and maintain an information and consultation  
3 service with respect to our aspects of the administra-  
4 tion of justice, and that is including the organization  
5 and the personnel and the administration and procedures  
6 of the courts and the bar and allied agencies concerned  
7 with the administration of justice. Our offices are in  
8 Chicago. We have a staff of nine people. And I guess  
9 that is about enough, about 60 seconds, at least.

10 MR. MARTINEAU: Let me ask one more question  
11 on the Society, with specific reference to the State of  
12 Maryland, do you have a number of members from the  
13 State?

14 MR. WINTERS: Yes, we have several hundred  
15 members in this State. And Judge John B. Gray is  
16 currently a member of our Board of Directors repre-  
17 senting Maryland. Judge Emory Niles has been in the  
18 past.

19 MR. MARTINEAU: Mr. Winters, I wonder if you  
20 would review for us, briefly, the experience that you  
21 have had over the last 25 years in dealing with other



1 states in connection with constitutional conventions or  
2 constitutional revisions with respect to their judi-  
3 ciary articles.

4 MR. WINTERS: Well, prior to joining the  
5 American Judicature Society, I lived in the State of  
6 Missouri where I was originally admitted to the bar and  
7 that was the very time that Missouri was going through  
8 its studies on selection of judges which resulted in  
9 the adoption at that very time of what has become to  
10 be known as the Missouri Plan, actually a proposal which  
11 had been devised in advance by the American Judicature  
12 Society. Since then, there have been major constitution-  
13 al revisions. There have been judicial articles in New  
14 Jersey, Illinois and Puerto Rico. I would not under-  
15 take to name all of them, California; and the American  
16 Judicature Society has been involved in greater or  
17 lesser extent, in all of these. I would not say, of  
18 course, we had a controlling part or even a leading  
19 part, but we have been active in all of those, in  
20 particular the, judicial aspects of them.

21 MR. MARTINEAU: Well, have you through your





1 experience with the Society had an opportunity to study  
2 and make recommendations with respect to the judiciary  
3 articles of a large number of states?

4 MR. WINTERS: Yes. We did that with Missouri,  
5 of course. The Society's recommendations were the ones  
6 that were adopted in that state. When the New Jersey  
7 constitution was revised in 1948, they did not go into  
8 selection of judges, but in court organization and  
9 administration and other aspects the Society's recom-  
10 mendations were received and followed. In the State of  
11 Illinois, much the same is true, and that one has become  
12 a model in all other respects except judicial selection.  
13 The Puerto Rico judicial article of 1952 relied upon  
14 our recommendations in most areas.

15 MR. MARTINEAU: Would it be fair to say, then,  
16 that over the last 25 years, your entire professional  
17 life has been devoted to the study and analysis and  
18 recommendations concerning the judiciaries of the various  
19 states of the union?

20 MR. WINTERS: Well, I guess so.

21 MR. MARTINEAU: All right. Now, first of



1 all, before we get into any recommendations you might  
2 have, or any with respect to the State of Maryland, are  
3 you first of all familiar with our court organizational  
4 setup and our system of selection and election of  
5 judges that we have here in the State?

6 MR. WINTERS: Oh, yes. I do not suppose that  
7 I could pass an examination on the details of it, but  
8 I had been familiar with it through the years, and  
9 especially during recent months when current proposals  
10 have been under way.

11 THE CHAIRMAN: You are speaking particularly  
12 of the selection proposals?

13 MR. WINTERS: Yes, and removal.

14 THE CHAIRMAN: Have you had an opportunity,  
15 Mr. Winters, to look at our first report on this Com-  
16 mittee? I do not suppose you have at this point.

17 MR. WINTERS: Well, it was sent to me the  
18 other day and I looked at it briefly. I'm afraid I  
19 have not had a chance to study it through.

20 THE CHAIRMAN: Very, very briefly what we  
21 have in mind at this point, it is all very tentative



1 now, is a court system of four levels, the highest court,  
2 the intermediate court, trial court of general juris-  
3 diction and trial court of limited jurisdiction. I  
4 suppose that is fairly standard throughout the country,  
5 is it?

6 MR. WINTERS: For a state like this, it would  
7 be, yes. Smaller states that do not need an intermediate  
8 appellate court, the ideal level is three levels; where  
9 the volume of the appellate court warrants it, then that  
10 would be considered standard, yes.

11 THE CHAIRMAN: Mr. Winters, on the subject of  
12 judicial selection, tenure and removal, our Committee  
13 so far has reached a very general tentative position  
14 that judges should be by appointment of the Governor  
15 from a list presented to him by a nominating commission.  
16 We have not come to any final conclusions with respect  
17 to details. One of the areas that we are now discussing  
18 is the subject of competitive elections versus non-  
19 competitive elections, that is, the judge running --

20 MR. WINTERS: Yes, I understand.

21 THE CHAIRMAN: -- on his record. Could you





1 comment or give us any suggestions based on your exper-  
2 ience in other states concerning that subject matter?

3 MR. WINTERS: Well, I would have to say that  
4 if you have a system of selection by appointment from  
5 names submitted by a nominating commission, then in my  
6 opinion it should be supplemented by a tenure proceeding  
7 which would give the security of the non-competitive  
8 election. To have a competitive election means that  
9 you are detracting from the principle of selection by  
10 persons who have had an opportunity to study the avail-  
11 able candidates and make informed value judgments on  
12 them, which the electorate does not normally have an  
13 opportunity to do; and to the extent, when they come  
14 up at the end of their term for reelection, that they  
15 have to compete against persons who may choose to run  
16 against them, to the extent that these people run, it  
17 is a derogation of that principle.

18 THE CHAIRMAN: Do you know of any instances  
19 in which a judge who comes up for election and has run  
20 against his record, where they have not been approved  
21 by the voters?



1 MR. WINTERS: Well, in the vast majority of  
2 instances they have been, and that is properly so. And  
3 it has even been so, universally true, that there have  
4 been charges that there is no substance to the non-  
5 competitive election, that it has been, as they say,  
6 freezing them in office. Well, that is not true,  
7 because there have been a couple of instances in which  
8 a judge who came up that way was not reelected. It is  
9 enough to prove that it can work, that it is not a mere  
10 empty gesture and yet not enough to interfere with the  
11 general principle that it does offer the kind of security  
12 that a good lawyer wants to have before he gives up his  
13 practice.

14 MRS. BOTHE: How many states have a nominating  
15 system with a judge running against his record?

16 MR. WINTERS: Well now, there are two things  
17 there, one, the nominating system, and the other, tenure  
18 by non-competitive election. And some states have both.  
19 Some states have the one and some have the other. If  
20 you add all of those together, there are about a dozen,  
21 I think I could name them from memory. For example, my



1 State of Illinois has tenure by non-competitive election,  
2 but it does not have the nominative and appointive  
3 systems.

4 THE CHAIRMAN: What do they use in place of  
5 that?

6 MR. WINTERS: Well, they still have political  
7 election.

8 MR. MARTINEAU: Would you consider that a  
9 defect in the Illinois system?

10 MR. WINTERS: I certainly do. The original  
11 plan was to have approximately the same type of thing  
12 that you are presently thinking of, but they just were  
13 not able to get that much.

14 MRS. BOTHE: How many states have the nomi-  
15 nating commission system?

16 MR. WINTERS: Well, I think I can name them,  
17 there is Missouri, Kansas, Iowa, Nebraska, Alaska,  
18 Utah has it with respect to the juvenile courts, and  
19 Oklahoma with respect to the juvenile courts of one city,  
20 Tulsa, Florida has it with respect to the metropolitan  
21 court of Dade County, Miami, it is used in the county





1 court of Denver, Colorado. All of those are by consti-  
2 tutional provision or by statute. Then, in addition,  
3 it is being used on a voluntary basis in the City of  
4 New York by Mayor Lindsay, now following along after  
5 Mayor Wagner. And the latest addition of the list is  
6 Puerto Rico, where Puerto Rico's new Governor Sanchez  
7 Valega has established a commission, on a voluntary  
8 basis, to advise him. So, there are pretty close to a  
9 dozen states which actually are using them and eight or  
10 nine of them by law.

11 MR. MARTINEAU: Did you mention Kansas?

12 MR. WINTERS: I guess I missed Kansas there,  
13 with respect to the Supreme Court.

14 THE CHAIRMAN: How many of those states also  
15 have the non-competitive election?

16 MR. WINTERS: All right. That is in use in  
17 Missouri, Kansas, Iowa, Nebraska, Alaska, Florida, to  
18 the extent I mentioned, and then Illinois, which does  
19 not have the other feature, the county court of Denver,  
20 Colorado, the Utah juvenile courts have the nominating  
21 commission, but they have reappointment rather than the



1 non-competitive election for tenure.

2 MR. MARTINEAU: They do not have the election  
3 at all for tenure?

4 MR. WINTERS: No.

5 MR. CORY: These nominating commissions  
6 function at the end of the judge's tenure as well? In  
7 other words, if a lawyer goes on the bench and runs  
8 through his tenure and it is time for him to be elected  
9 again, does he have to be nominated again by the same  
10 commission or does he just automatically get a crack  
11 at going on the ballot?

12 MR. WINTERS: Only in two of those, with  
13 respect to the county courts of Denver, Colorado, and  
14 the juvenile court of Utah he comes up to the nominating  
15 commission again.

16 MR. MARTINEAU: He has to be reappointed?

17 MR. WINTERS: Because he has to be reappointed.

18 THE CHAIRMAN: In all of the others, his name  
19 automatically goes on the ballot for the non-competitory  
20 election and the commission is not involved. All he has  
21 to do is indicate his desire to run.



1 MR. CORY: Mr. Winters, do you have any  
2 problem in Missouri or do they have any problem in  
3 Missouri getting good qualified lawyers to go on the  
4 bench for a short period of six years?

5 MR. WINTERS: Well, they did before they had  
6 this tenure provision, because there was no assurance  
7 that someone would not come along and take the office  
8 away from them. But with the assurance of tenure by  
9 non-competitive election, they do not have that problem,  
10 and good lawyers do take judicial office.

11 MR. CORY: Well, is it possible that if they  
12 finish the tenure of six years, that some other lawyer  
13 could go to a nominating commission and ask that he be  
14 put on the ballot?

15 MR. WINTERS: No, that could not be done.

16 MR. CORY: That cannot be done?

17 MR. WINTERS: The only way that the man can  
18 get on, is if the voters would reject the man who is in  
19 office, then the commission would have the duty of nomi-  
20 nating someone to take his place.

21 MR. CORY: It would have to be a special





1 election, then?

2 MR. WINTERS: No.

3 THE CHAIRMAN: It could not be done.

4 MR. MARTINEAU: The commission would not  
5 recommend someone else to run in an election, the  
6 commission would recommend someone who would be  
7 appointed by the governor to be judge, and then at the  
8 next general election would stand for the election to  
9 the six-year term. Is that not correct?

10 MR. WINTERS: Yes.

11 MR. CORY: Has there ever been any case that  
12 you know of where lawyers have been rejected by the  
13 voters?

14 MR. WINTERS: There was one, the situation  
15 that really had a great deal to do with the adoption of  
16 the Missouri Plan was the well-known reign of Boss Tom  
17 Pendergast in Kansas City, who had very tight control  
18 over politics in that city, and to some extent through-  
19 out the state. And he had his men everywhere in office,  
20 including the judiciary. And one of his men came up  
21 for reelection in the first election after the adoption



1 of the plan and was rejected as a part of the voters'  
2 general protest against Pendergast. Other than that,  
3 all Missouri judges have been returned to office by  
4 substantial votes, for the substantial reason that they  
5 have all been good appointments and there has not been  
6 any reason for rejecting them.

7 MR. MARTINEAU: That is one thing I would  
8 like to stress here, if I may. One of the major diffi-  
9 culties that has been raised to having a non-competitive  
10 election is that this is just a lifetime guarantee of  
11 continuation in office, notwithstanding the man's  
12 relative ability or lack of ability. And the point of  
13 the fact there has only been one judge in Missouri, and  
14 I think also one judge in Alaska who was defeated in the  
15 non-competitive election and I just wonder, so far as  
16 you are familiar with the experiences in these states,  
17 do you know of any judge who, where there was a sub-  
18 stantial segment of population or of the bar who thought  
19 the judge was not qualified to remain in office, that  
20 he was retained in office notwithstanding that?

21 MR. WINTERS: No, sir. If there had been, it



1 would be a point against the selection system. And the  
2 fact that in all these 25 years there has only been that  
3 one instance does not mean that that non-competitive  
4 election system is not effective to remove. It means  
5 equally well that the selection system has worked well  
6 and that those people have been happy with their judges  
7 and that is actually the case.

8 MRS. BOTHE: Mr. Winter, I was interested in  
9 your remarks that so many of these nominating commissions  
10 are not constitutionally set up. Of course, we are con-  
11 cerned with what belongs in the constitution, rather than  
12 what the selection methods might be otherwise, and I  
13 wonder if you would comment on the necessity, if there  
14 is one, of including a constitutional proceedings for  
15 the nominating commission or whether it might be done  
16 by legislation or by an advisory committee to the  
17 governor at his election.

18 MR. WINTERS: Well, any governor who wants  
19 to get advice with respect to his appointments is cer-  
20 tainly free to do it. And all governors do get advice  
21 from one source or another. Usually they get it from





1 their political organization because the governor is  
2 the top man in the political organization that won the  
3 last election. A few of the governors have realized  
4 that judicial appointments ought not to be political  
5 because the judiciary ought to be above politics. And  
6 it is difficult, nevertheless, for them to make these  
7 appointments free from political considerations, because  
8 political pressures are constantly on a governor and  
9 so surprisingly, some of these men have found that it  
10 was equally advantageous to them to set up an advisory  
11 commission to which they could turn for counsel in  
12 making judicial appointments, and to which they could  
13 refer people who came to them asking for judicial  
14 appointments and say, well, I agree to take my appoint-  
15 ments from this nominating commission.

16 THE CHAIRMAN: Is this what you referred to  
17 earlier as the voluntary system?

18 MR. WINTERS: Yes, but that is only to the  
19 extent that the governor wants to do it on his own free  
20 will and it is not any substitute for a constitutional  
21 plan which would be put in the judicial structure of



1 the states and will give the people of the state  
2 assurance of this kind of service through one administra-  
3 tion after another, and that is what you want.

4 MR. MARTINEAU: Isn't there actually an  
5 example in Pennsylvania of how this so-called voluntary  
6 system actually backfired on the Governor of Pennsylvania  
7 and turned out to be a rather disastrous proposal for  
8 him?

9 MR. WINTER: Well, I would not put it that  
10 way. Governor Scranton was the first one who did  
11 appoint a voluntary commission to advise him with  
12 respect to a series of Common Pleas Court appointments  
13 in Philadelphia. I would not say that it backfired.  
14 Those appointments came up in due course of time for  
15 election under the elective system and political authori-  
16 ties who would have liked to have had a hand in their  
17 original selection and were not able to do so because  
18 of that, finally had a chance to get back at them and  
19 it was necessary because of the system to make some  
20 kind of an arrangement for those men's protection and  
21 an arrangement was provided, where I am not at this



1 moment familiar with exactly what they did, but in  
2 essence, they had to get --

3 MR. MARTINEAU: My understanding of the  
4 arrangement was, in order to obtain the support of the  
5 political parties to back these men, that the Governor  
6 had appointed, he had to promise not to use this  
7 advisory commission on future judicial appointments.  
8 That is my understanding of it.

9 MR. WINTERS: I do not believe that back-  
10 fired. He may have done it.

11 MR. MARTINEAU: Isn't it true he no longer  
12 uses the advisory commission to make his judicial  
13 appointments and the political party supported the ap-  
14 pointees for election to office?

15 MR. WINTERS: They did support these appointees  
16 and I do not believe he has used the commission again.  
17 I am not aware that he has pledged himself to them.  
18 That may not be.

19 MRS. BOTHE: What about the middle possibility  
20 of having legislation which would accomplish the purpose,  
21 but not have constitutional provision?





1 MR. WINTERS: I think that would raise a  
2 question of constitutional law. You have the present  
3 system and if the system provides that the governor  
4 shall make an appointment to fill a vacancy and if he  
5 has that power by constitution, why, I do not think the  
6 legislative can dip into it without constitutional  
7 authority, wouldn't you say?

8 MR. MARTINEAU: Well, my own view, and I  
9 think what you are saying is, any commission created by  
10 statute could be only advisory, could not submit binding  
11 recommendations?

12 MR. WINTERS: That is it, yes.

13 MR. MARTINEAU: One question I wanted to ask  
14 you, in reviewing the states, isn't it correct that  
15 California has the non-competitive election for the  
16 appellate court judges?

17 MR. WINTERS: Yes.

18 MRS. BOTHE: Do all of these states have the  
19 nominating commission use them from the top courts down  
20 to the courts of limited jurisdiction, or do they reject  
21 them sometime at the appellate levels?



1 MR. WINTERS: Kansas uses it with respect to  
2 the Supreme Bench; Florida, only with respect to the  
3 minor courts, the metropolitan court of Dade County.  
4 There are three states that use them for the appellate  
5 courts and the trial courts of general jurisdiction,  
6 which correspond to your circuit court, those three are  
7 Iowa, Nebraska and Alaska.

8 MRS. BOTHE: Do any of them use them for  
9 courts of limited jurisdiction, trial magistrate level?

10 MR. WINTERS: Well, two, that is one in Dade  
11 County, Florida, and the county court of Denver, Colorado.

12 MRS. BOTHE: Do you feel it is necessary to  
13 carry the principle all the way down to the lowest level  
14 of courts?

15 MR. WINTERS: In my opinion it is even more  
16 needed there than in the higher courts.

17 MR. CORY: What does that mean, really, this  
18 non-competitive election? I guess I should know exactly  
19 what it is, does it mean that all judges, their names go  
20 on the ballot, but nobody else's name can go on the  
21 ballot in opposition to them and so in order to be



1 rejected, they have to get a lot of nos or, rather, a  
2 majority of nays than yeas in an election?

3 MR. WINTERS: That is correct.

4 MR. MARTINEAU: Let me ask you this, what  
5 procedure has been developed to advise the voters with  
6 respect to voting in a non-competitive election?

7 MR. WINTERS: Well, that is a good question,  
8 because some people have said that if there is not  
9 competition at the polls, how are the voters going to  
10 know? And two answers to that are, that if a judge has  
11 been doing a good job, it is not likely that the voters  
12 are going to have had much contact with his work. Most  
13 of what goes on in the courts, particularly the civil  
14 courts, does not attract much public attention. If,  
15 however, he has been a bad actor, that will get public  
16 attention, so that the voters will have a chance to  
17 oust a man who has really disgraced himself in office  
18 and ought to be removed. For the others, the bar  
19 associations, in the State of Missouri and in other  
20 states where this plan is in effect, have assumed that  
21 they have a responsibility to the voters in such an





1 instance to give them the benefit of their evaluation  
2 of their work, because it is the lawyers who are in  
3 court and see this man in action and who have an oppor-  
4 tunity to know how good a job he is doing, and so they  
5 do offer professional evaluation of the judges, those  
6 that are publicized and have been effective in guiding  
7 the vote.

8 MR. MARTINEAU: Am I correct in saying that  
9 those occasions, two occasions, I believe, in which the  
10 voters have rejected a judge, have been the only two  
11 occasions in which the bar has disapproved of the judge?  
12 In other words, the voters have in every case followed  
13 the recommendations of the bar?

14 MR. WINTERS: I believe that is true, yes.  
15 The only times in which the judge did not get a favor-  
16 able vote were those two instances, in which the voters  
17 went along with them.

18 MRS. BOTHE: What is the composition of the  
19 nominating commissions generally? Do they have a pattern  
20 of lawyers predominating, do they have judges on them,  
21 do they have more laymen than lawyers? What is the



1 recommended scheme in your opinion?

2 MR. WINTERS: There are considerable varia-  
3 tions among those. In Missouri they are equally divided  
4 between lawyers and laymen, with a judge as chairman.  
5 For the appellate court it is three and three. And for  
6 the trial courts, two and two. In that Denver County  
7 Court situation, there is a majority of laymen.

8 MRS. BOTHE: As far as the inclusion of a  
9 judge, that seems to be quite a controversial question,  
10 whether a judge would be an undue influence.

11 MR. WINTERS: Well, I heard that debated.  
12 In my opinion, it is desirable to have at least one  
13 judge in on that, to begin with. It is desirable to  
14 have laymen, because if it is all lawyers or all lawyers  
15 and judges, there may be a tendency to overemphasize the  
16 technical qualifications of this person, to favor what  
17 they call the lawyer's lawyer. And the laymen on the  
18 commission will tend to provide a broader evaluation  
19 of his qualifications. An all-laymen commission, I have  
20 often thought might work out very well, because if they  
21 were the right kind of people, they would not attempt



1 to evaluate professional qualifications themselves, and  
2 would seek advice from lawyers. But, of course, a more  
3 sensible thing to do is provide for lawyers' professional  
4 evaluation right within the commission, and that is why  
5 every commission that I know of does have lawyers in it,  
6 but there is a distinction between the lawyer's view-  
7 point and the judge's viewpoint. Not every person who  
8 is a good lawyer would make a good judge. And actually,  
9 nobody who has not really sat behind the bench in the  
10 judge's position is fully able to comprehend what is  
11 involved here. And so I would hold out for at least  
12 one judge on that commission.

13 MR. CORY: Do the laymen that are chosen on  
14 these nominating commissions generally come from the  
15 political type or are they civic leaders or are they the  
16 type of person that would understand what is needed in  
17 the selection of a judge?

18 MR. WINTERS: They have tended to be what you  
19 call the civic leader type.

20 THE CHAIRMAN: They are appointed by the  
21 governor?





1 MR. WINTERS: By the governor, yes.

2 MR. MARTINEAU: That is universal, isn't it?

3 MR. CORY: Do you find that you get serious  
4 help from the laymen in the choice of these judges?

5 MR. WINTERS: Very much so. The way that one  
6 chairman of one of the commissions has described it, he  
7 says that at the beginning of the deliberations, though  
8 laymen tend to be rather silent, these lawyers know these  
9 fellow lawyers and they discuss them freely, because  
10 they have known them for a long time. It may not be very  
11 long, as the discussion goes along and the laymen listen,  
12 they begin to notice some flaws in the lawyers' reasoning  
13 and at the conclusion of the discussion the laymen are  
14 the ones who may exercise the major influence.

15 MR. CORY: You mean the laymen seem to over-  
16 power the lawyers in the final analysis in the choosing  
17 of these judges?

18 MR. WINTERS: I wouldn't say they overpower,  
19 but as they listen and become informed, they do move  
20 into the discussion.

21 MR. CORY: One of the criticisms that I heard



1 about this plan was when the lawyers met with the laymen,  
2 that the lawyers were going to take the ball and carry  
3 it anyway, and the laymen were not going to do anything  
4 much about it.

5 MR. WINTERS: That has not been true. Of  
6 course, that is a matter of personality. You could get  
7 a group of certain lawyers who would dominate.

8 MRS. BOTHE: The reasons I have heard have  
9 been the judge would dominate everybody, laymen and  
10 lawyers.

11 MR. MARTINEAU: Have you been familiar with  
12 any experiences in states that you have judges sitting  
13 on the nominations commission, that the judges wind up  
14 dominating the commissions and actually both make the  
15 lawyers and the laymen fearful to oppose their recom-  
16 mendations and wind up being, in effect, rubber stamps  
17 for the judge and the commission?

18 MR. WINTERS: That could only happen in a  
19 case of an individual judge who had a very strong  
20 dominant personality. Now, you asked me if I am  
21 familiar. I answer, there is one instance that I know



1 of where one individual judge tended to have that effect.

2 MR. MARTINEAU: Is this because he was a  
3 judge or just a dominating person?

4 MR. WINTERS: No, it was just the individual.

5 MRS. BOTHE: Is there any way of really being  
6 able to know that, unless you serve on one of these  
7 commissions?

8 MR. WINTERS: Well, they are people, the  
9 lawyers, the judges and the laymen are people. And this  
10 group right here offers a variety of personalities, and  
11 any other group of this number would have a different  
12 variety of personalities. But I do not believe that the  
13 stereotypes of judge, lawyers and laymen over a long  
14 period of time, over a group of commissions are not  
15 basically sound and all ought to be in there, in approxi-  
16 mately the proportions that most of the commissions now  
17 have. I think it is right.

18 MRS. BOTHE: Is it necessary to specify in  
19 the constitution itself the makeup of the nominating  
20 commission or would that more naturally be a question of  
21 statute after the nominating commission was specified in





1 the constitution?

2 MR. WINTERS: Well, I suppose it could be  
3 done either way. I would be afraid if it were left to  
4 statute that there might be some tampering with it some-  
5 time under pressure. I think it would be safer to have  
6 it in the constitution.

7 THE CHAIRMAN: Mr. Winters, do you have any  
8 fixed ideas as to whether or not the lawyers should out-  
9 number the laymen on the commission or should it be an  
10 equal number or does it really make any difference, as  
11 long as you have a fair representation of both groups?

12 MR. WINTERS: Well, I think I would be in-  
13 clined to say yes to all of those. I think that it  
14 probably would not make much difference in the effect,  
15 but from a public relations standpoint, I think there is  
16 strong reason for having the laymen at least equal to  
17 the lawyers, and I would say --

18 THE CHAIRMAN: Does that include the judge as  
19 in the lawyer group?

20 MR. WINTERS: Well, no. You cannot have it  
21 exactly, because it is desirable to have an odd number



1 of people on this thing in order to avoid any possibility  
2 of a stalemate. But the experience, the public relations  
3 experience in that one Denver instance in which the lay-  
4 men do outnumber the lawyers has been good. And I  
5 repeat, I feel strongly that this is an important place  
6 for the non-lawyer to serve. The courts are not a  
7 place primarily for lawyers and judges to hold forth,  
8 any more than schools are for principals and hospitals  
9 are for doctors and nurses. Hospitals are for patients,  
10 schools are for the pupils, courts are for the litigants,  
11 the businessmen and the citizens who appear. And the  
12 laymen on the nominating commission gives them a chance  
13 to have their say in the people who preside over these  
14 courts. And I think that is good, and I think that it  
15 is proper.

16 MRS. BOTHE: We ought to have at least one  
17 convicted criminal.

18 THE CHAIRMAN: Well, are you saying then that,  
19 for example, in the seven-man commission, that there  
20 should be at least three laymen, three lawyers with the  
21 judge as the chairman of the nominating committee?



1 MR. WINTERS: That is the type of commission  
2 that has had the most experience, and I think that the  
3 experience with that has been good. When I say the  
4 most experience, there still has not been enough exper-  
5 ience for anybody to be very sure that the last word  
6 has been found. I am not sure that it could not be  
7 improved on.

8 MR. CORY: All of these nominating commission  
9 members are appointed or are some of them chosen some  
10 other way?

11 MR. WINTERS: Well, in all that I know of, the  
12 laymen are appointed. Lawyer members tend to be elected  
13 by the bar association or by the whole membership of the  
14 bar. In Missouri that is the same thing. In fact, I  
15 do not know of any instance in which they are elected  
16 by the bar association, when there is a difference --  
17 for example, the State of Iowa does not have a unified  
18 bar as Missouri does, but they do not use the association.  
19 The Supreme Court has a system for polling all lawyers  
20 without regard to association.

21 MR. CORY: As a practical matter, in the





1 State of Maryland our present governor does not have a  
2 very good view with respect to the bar association, I  
3 mean, he thinks that politics in the bar association is  
4 more vicious than the politicians in the entire State.

5 MR. WINTERS: Well, the professional opinion  
6 of lawyers ought always to be of value. But if there  
7 were that weakness, perhaps that would be a more universal  
8 answer to the need for a nominating commission than it  
9 is, but lawyers are people in any organizations, they  
10 act like any other and I suppose that is one reason why  
11 there is such a strong nationwide movement from one end  
12 of this country to the other to try to do the sort of  
13 thing that your commission is thinking of.

14 THE CHAIRMAN: Mr. Winters, in the states that  
15 have these nominating commissions, has the practice been  
16 that after, or rather when a vacancy occurs and the  
17 nominating commission is considering nominations, has  
18 the practice been for them to seek guidance or advice  
19 from the bar associations at that point?

20 MR. WINTERS: I think not. I do not think  
21 they go to the association. They announce that they are



1 going to make nominations and they invite anybody. And  
2 I suppose if the officials of the bar association want  
3 to present something, they could, I suppose they could  
4 present it on the letterhead of the association. I am  
5 not aware that they ever do it, though.

6 THE CHAIRMAN: They do not take their own  
7 straw vote at that time for the purpose of advising  
8 the nominating commission?

9 MR. WINTERS: Oh, I am quite sure they do not  
10 do that.

11 MR. MARTINEAU: There is no reason they could  
12 not do it.

13 MR. WINTERS: No, sir.

14 MR. MARTINEAU: There is no reason the system  
15 could not operate, just as it does here in the State of  
16 Maryland, that the bar association committee recommends  
17 to the nominating commission, rather than to the Governor?

18 MR. WINTERS: Yes.

19 THE CHAIRMAN: What are the mechanics of  
20 having this straw vote of the lawyers at the time that  
21 the judge comes up to be approved or disapproved by the



1 voters, how does that work?

2 MR. WINTERS: What do you mean, straw vote?

3 MRS. BOTHE: This may be only in the Niles  
4 plan.

5 MR. MARTINEAU: It is true in other states  
6 too.

7 THE CHAIRMAN: I understand many other states  
8 have this system, that they also provide for a straw  
9 vote of the lawyers to be made public, to advise the  
10 public as to how the lawyers feel about this particular  
11 judge.

12 MR. WINTERS: The best ones are those that  
13 have been done in the State of Ohio, several of the  
14 large city associations there conduct polls and they  
15 have a list of about a dozen questions asking for opinion  
16 on this man's integrity, on his knowledge of the law,  
17 his courtesy to the people who appear before him and so  
18 forth. And those are weighted questions. I remember  
19 that in most of them, integrity is given 50 per cent  
20 weight, and I think promptness 10 per cent, or other  
21 variations.





1 MRS. BOTHE: That is announced to the general  
2 public?

3 MR. WINTERS: Not the specific evaluation of  
4 these things. They do get their answers, they compute  
5 them and they determine whether or not the man has the  
6 endorsement of the bar, if so, the bar goes out and  
7 supports him.

8 MRS. BOTHE: Does he have to get a grade of  
9 70 per cent to pass the bar?

10 MR. MARTINEAU: Where they have a non-  
11 competitive election, the lawyers vote in the same way  
12 that the public votes, should Judge X be retained in  
13 office, isn't that correct?

14 MR. WINTERS: Yes.

15 MR. CORY: When this questionnaire is given  
16 to lawyers and they do not mark their straw vote, I like  
17 Smith or I like Jones, they just answer a set of ques-  
18 tions and then those are used as ballots in the straw  
19 vote?

20 MR. WINTERS: Let's distinguish, as Bob has  
21 just pointed out, in the states that have non-competitive



1 election, I do not know that they go through that.

2 MR. CORY: I am interested particularly in  
3 the type of ballot that would be used among lawyers.  
4 Do I understand you to say that they have a set of  
5 questions, they do not just vote for Smith or Jones,  
6 but they mark Smith or Jones' paper and the question-  
7 naires are given certain weight and then --

8 MR. WINTERS: Yes.

9 MR. CORY: After the papers are graded, they  
10 serve as a ballot, is that it?

11 MR. WINTERS: That is the practice in certain  
12 Ohio cities.

13 MR. MARTINEAU: That is between competing  
14 candidates, is it not?

15 MR. WINTERS: Yes.

16 MR. CORY: I understood it was only used in  
17 certain places. I'm interested in that type of ballot,  
18 I think it is very good.

19 THE CHAIRMAN: Couldn't that also be used in  
20 a non-competitive situation?

21 MR. WINTERS: Perhaps it could. The idea is



1 that it gets away from the idea of personal popularity  
2 and tries for personal evaluation. Of course, all of  
3 those things are imperfect at best.

4 THE CHAIRMAN: Why wouldn't it be just as  
5 effective in a non-competitive situation?

6 MR. WINTERS: I suppose it would.

7 MR. MARTINEAU: I do not see any reason for  
8 it in a non-competitive election, because the issue is  
9 not the same as the issue is in a competitive election,  
10 you had to choose between two, and which one are you  
11 going to vote for? One gets a 65 rating, the other one  
12 gets a 75 rating, but in an non-competitive issue, the  
13 simple issue is should he be retained in office? And  
14 the judge in a straw poll can vote on that question for  
15 any darn reason he pleases, but really the only relevant  
16 question is, does the lawyer recommend that he be retained  
17 in office or not? So, I do not know that there would be  
18 any point in having this detailed questionnaire with the  
19 weighted questions.

20 MRS. BOTHE: If you and Mr. Winters can give  
21 me the time, there are a couple questions in an entirely





1 different area I was interested in asking you.

2 THE CHAIRMAN: Go ahead.

3 MR. MARTINEAU: Can I just ask one more on  
4 the competitive election business and try to summarize  
5 it a little bit?

6 MRS. BOTHE: Go ahead.

7 MR. MARTINEAU: What if any function do you  
8 feel that a competitive election has in choosing people  
9 to serve on the bench? Do you think it has any function  
10 at all?

11 MR. WINTERS: Well, you asked if it has a  
12 function at all. Yes, it has a function of deciding  
13 which of these candidates is going to get the job.

14 MR. MARTINEAU: No. What I mean is, is there  
15 any purpose in having a competitive election as opposed  
16 to a non-competitive election in determining who is going  
17 to sit on the bench?

18 MR. WINTERS: Any advantage?

19 MR. MARTINEAU: All right. Advantage.

20 MR. WINTERS: Well, I do not think so. I  
21 think that when you begin with an appointive selection,



1 then when you come up to tenure, to offer opportunity  
2 for someone else to run against the incumbent, of course,  
3 I can see the only thing that it will do is add to his  
4 insecurity and make it more difficult to get the right  
5 man to take that office in the first place, because  
6 perhaps it is almost a general rule that people who have  
7 real merit also have a certain measure of humility and  
8 are not so cocksure that somebody better may not come  
9 along at another time. And when a lawyer gives up his  
10 clients, they go to somebody else and he may be able to  
11 build a practice again sometime, he will never get those  
12 clients back. And that is something for a good lawyer  
13 to think about and that is why there are these two  
14 standards; the one standard on initial selection, to get  
15 the very best man that you can, but then on tenure, at  
16 the time that he comes up at the end of his term, the  
17 question should not be then, who is the best man we could  
18 get for this job, because this man has given up his  
19 clients and takes the job, and there is a moral obliga-  
20 tion to him if he is doing a good job, he should be  
21 returned and that should be the only question.



1 MRS. BOTHE: I was going to go off in an  
2 entirely different area which concerns me, perhaps more  
3 than any other members of the Committee. At our last  
4 meeting we discussed the question of compulsory retire-  
5 ment. Under the present law, the judges have to retire  
6 at the age of 70. They call it constitutional retire-  
7 ment, and some of them seem very chipper when they say  
8 it.

9 THE CHAIRMAN: Constitutional senility.

10 MRS. BOTHE: Senility, they do not seem that  
11 senile to me. This Committee has tentatively, at least,  
12 agreed that we could perpetuate that restriction with  
13 perhaps the ability for the chief judge to bring men  
14 out of retirement for limited purposes. What is your  
15 view on that subject?

16 MR. WINTERS: Well, I would very strongly  
17 endorse that very thing. I think it is important to  
18 have a fixed retirement age and there are many judges  
19 when they reach that age, they ought to retire, but  
20 some are like Holmes and Brandeis, whose ability con-  
21 tinues unblemished for a long time thereafter and it is





1 entirely feasible, possible, and desirable to make  
2 arrangement for chief judge or administrative officer  
3 to arrange for them to continue serving, but no longer  
4 than in the opinion of the presiding judge they can  
5 render useful service. That is the way it ought to be.

6 THE CHAIRMAN: You say 70 is the proper age,  
7 or perhaps with a change in medical standard and longer  
8 lives, that the age might be increased?

9 MR. WINTERS: Well, I suppose perhaps it  
10 could be, but with proper provision for assignment of  
11 retired judges to special service. I do not think that  
12 is too important a point. I think 70 is all right.

13 MR. MARTINEAU: Do you think that age ought  
14 to be constitutionally fixed?

15 MR. WINTERS: Oh, maybe not. I tend to shy  
16 away from putting any specifics in constitutions, but  
17 that is so universal and standard, I do not think it  
18 would do any harm to put that in.

19 MRS. BOTHE: We were concerned if it were not  
20 in the constitution, the legislature would perennially  
21 change the age to accommodate the judges.



1 MR. WINTERS: I think there is something to  
2 that.

3 MR. CORY: I noticed when I tried a case in  
4 Kentucky, the lawyer that I was working with had a lot  
5 of assignments as a judge. He had been a judge for about  
6 five or six times. And I asked about it and he said  
7 that in Kentucky they can call on lawyers to sit for  
8 limited periods of time or on any limited case. And he  
9 had been asked on several occasions to do this. Is that  
10 something that takes place in other states? Are you  
11 familiar with that?

12 MR. WINTERS: Well, I know they do it in  
13 Kentucky. I know of its having been done in South  
14 Dakota. Probably there are provisions in some states.  
15 I do not believe it is a very prevalent practice.

16 MR. CORY: You do not think it is prevalent,  
17 but do you think it is a sound practice, a good thing  
18 to do?

19 MR. WINTERS: I think in case of a sudden  
20 influx of cases where there is a need to dispose of  
21 some cases, that perhaps there would be benefit in



1 having some provision for that. I do not think it is  
2 very important, really.

3 THE CHAIRMAN: Mr. Winters, with respect to  
4 the length of term of judges, is there any magic number  
5 that seems to be the best length of term?

6 MR. WINTERS: Well, there are some judges  
7 that are as short as four years. In fact, I would not  
8 be too sure that there are not some as low as two years,  
9 in some minor courts, and that is very bad, of course.  
10 On the other hand, the 21-year term in Pennsylvania, I  
11 think, is really trying to reach something equivalent  
12 to life tenure by indirection and I think that, perhaps,  
13 more judges in the U. S. have a six-year term than any  
14 other, and that is not too bad. I would be inclined to  
15 favor eight or ten years.

16 THE CHAIRMAN: With respect to the appellate  
17 level or trial court level or both?

18 MR. WINTERS: Well, either one. I do not  
19 think it makes a great deal of difference between the  
20 two. But if you couple that with non-competitive  
21 reelection and with appropriate provision for removal





1 for disability or misconduct, then the actual length of  
2 term does not matter very much.

3 THE CHAIRMAN: But if you have a competitive  
4 election, is there any thought on the length of term  
5 that you have in a competitive election?

6 MR. WINTERS: Then I would tend to favor  
7 longer terms because of the inability to get any quali-  
8 fied lawyer with a good practice, to give up his practice  
9 and go on the bench for a short term with the prospect  
10 of being beaten at the next election.

11 MR. CORY: I would think it would be certainly  
12 difficult to get.

13 MRS. BOTHE: May we have your comment on the  
14 desirable methods of removal of judges for physical  
15 or mental disability or competence?

16 MR. WINTERS: Well, of course, impeachment,  
17 which is the only thing available in most of the states,  
18 is woefully inadequate and I do not think anybody  
19 questions that. And the best system that has been  
20 devised was the one that was adopted in California in  
21 1960, which established a commission on judicial



1 qualifications, which maintains an office and staff  
2 constantly at work. And complaints regarding the  
3 slightly over a thousand California judges may come  
4 to that office from any source and they are considered  
5 and evaluated and --

6 MRS. BOTHE: Grievance committee.

7 MR. WINTERS: -- investigated, and most of  
8 them do not get any further, because a lot of them  
9 amount simply to the fact that this judge did not  
10 simply decide my case the way I liked it. But in  
11 cases where there is merit on them, they go through,  
12 and recommendations are made and are submitted to the  
13 highest court of the state, which only has the power.  
14 Now, I understand that a proposal is pending in this  
15 State which has somewhat the same provision, except that  
16 those recommendations go to the legislature rather than  
17 to the Court of Appeals.

18 THE CHAIRMAN: What is your opinion of having  
19 the legislature make the final decision on that?

20 MR. WINTERS: Well, I would have to say two  
21 things about that. One, I do not think that that is



1 really the best way. I think it would be better if it  
2 went to the Court of Appeals, because this is a judicial  
3 matter. On the other hand, I am not too concerned about  
4 them doing it this way, because, after all, in most  
5 states where impeachment is the process that is handled  
6 by the legislature, and their responsibility in the  
7 field is quite clear. And I think that the bulk of the  
8 handling of these cases will come in the commission to  
9 whom it reports. Whether legislature or court, I think  
10 the court should be the one, but I think either way  
11 works pretty well.

12 MR. CORY: This evaluation group in California,  
13 does it work continually or only go into action upon  
14 receiving a complaint?

15 MR. WINTERS: Well, they evaluate the judges  
16 as a continuing matter, study their work. There are  
17 three elements in the California system. This is the  
18 commission, composed of representatives of all levels  
19 of the judiciary, plus the bar and plus the lay public,  
20 and it has regular meetings. I do not know whether they  
21 are monthly or what they are, but they meet. There is





1 a staff which is constantly available to answer the  
2 phone every day of the year, or every business day.  
3 And then the third is the Supreme Court. Now, the  
4 staff does routine investigations and reports to the  
5 commission. The commission decides which are important  
6 enough to be pursued. And many things are handled by  
7 the commission, but recommendations for actual removal  
8 come from it to the Supreme Court, which it alone has  
9 the power to remove. So, there are three.

10 THE CHAIRMAN: Getting back to this question  
11 of term, do you see any particular reason for distinguish-  
12 ing between term of the appellate court and that of the  
13 trial courts?

14 MR. WINTERS: Well, I have often wondered  
15 about that. I think there is quite a general practice  
16 to give the appellate court judges longer terms. I do  
17 not know of any particular basis for it.

18 MR. MARTINEAU: My own theory on it is that  
19 the effect of a judge who turns sour for one reason or  
20 another during the course of his term is much greater  
21 in a trial court where he is the only judge who is



1 sitting there and has daily contact with people, than it  
2 would be for the appellate judge, who only sits as one  
3 of a group, and only sits and listens to argument and  
4 does not have to make decisions on the spur of the  
5 moment. My own feeling leans towards having a shorter  
6 term for the trial court judge, not a longer term for  
7 the appellate judge, but a shorter term for the trial  
8 judge because of the difference in the type of work that  
9 he must do and which really is much more demanding,  
10 physically weighing on a man than the appellate court  
11 would.

12 THE CHAIRMAN: You might get into argument  
13 on that.

14 MR. MARTINEAU: When he turns sour, the  
15 results are much more disastrous. His partners on the  
16 bench cannot cover up for him. The appellate court  
17 can modify whatever his bad tendencies might be. And  
18 for that reason it seems to me there is a reason to  
19 distinguish between the two.

20 MR. WINTERS: You are not talking now about  
21 the proposed plans under consideration here, but the



1 general elective system. Because under the kind of  
2 proposals that are being discussed here, a situation  
3 like that is to be dealt with at any time and at the  
4 end of his term he probably would be returned to office  
5 anyway, so I cannot see that the term would make much  
6 difference.

7 THE CHAIRMAN: Plus the fact it would seem  
8 to me that the short terms on trial court level would  
9 tend to make the judges less independent, in knowing  
10 that they live in more of a goldfish bowl than the  
11 appellate courts.

12 MR. WINTERS: That is true. If you have  
13 tenure by non-competitive election, again, I do not  
14 think it makes so much difference. I really feel, with  
15 apologies, that I should bring this to a close.

16 THE CHAIRMAN: Well, we appreciate your  
17 meeting with us this morning, Mr. Winters, and look  
18 forward to meeting with you again.

19 MR. WINTERS: I congratulate you on the setup  
20 that you have, and am hopeful that Maryland will be in  
21 the future one of the states to which we can point with





1 pride. It already is in many respects.

2 THE CHAIRMAN: Thank you, very much.

3 MR. MARTINEAU: May I suggest that we ask  
4 Mr. Winters, through a letter, to comment on our first  
5 report as it has been filed, and perhaps, I would also  
6 like him to comment on those aspects of the recommenda-  
7 tions of our subcommittee which have not been approved  
8 of so far, and which does get into some rather detailed  
9 points, but which we are going to have to consider  
10 eventually. I would like to get his recommendations on  
11 those also, if it is all right with the Chairman, I  
12 would like to give him these things right now and ask  
13 him to comment on these.

14 THE CHAIRMAN: Fine. Thank you again, Mr.  
15 Winters.

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1                                    CONSTITUTIONAL CONVENTION COMMISSION

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4                                    Meeting of Committee on Miscellaneous

5                                    Provisions held on Thursday, March 10, 1966, at

6                                    10 o'clock a.m., in Room 801, State Office Building,

7                                    Baltimore, Maryland.

8                                    - - - - -

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11                                  PRESENT:

12                                    Mrs. Elsbeth Levy Bothe, Chairlady

13                                    Mrs. Maurice P. Freedlander, Member of the

14                                    Committee

15                                  ALSO PRESENT:

16                                    H. Vernon Eney, Chairman of the Commission

17                                    John C. Brooks, Executive Director of the

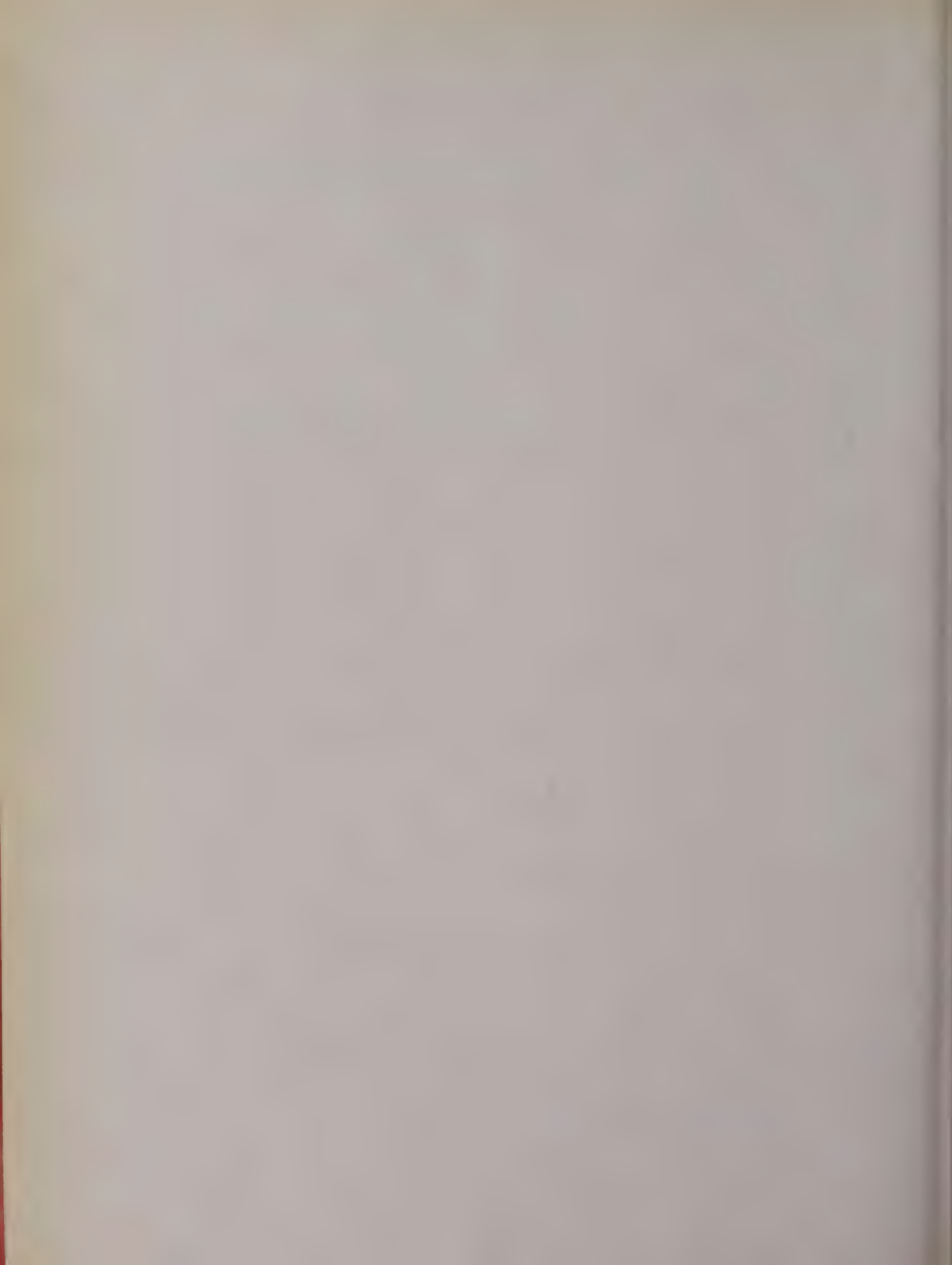
18                                    Commission

19                                    Dr. Harry Bard, Member of the Commission

20                                  Reported by:

21                                  A. A. Castiglione





1 THE CHAIRLADY: I think we will come to order  
2 now. Anyone who wants to sit closer, whether your name  
3 appears in front of a chair or not, we would be glad to  
4 have you draw up.

5 I would like to welcome you all and to thank  
6 you for your presence here and to apologize for the  
7 lateness, I assume it is merely the lateness of some  
8 of the members of the Commission who are expected. We  
9 will proceed and we have a reporter here, so that your  
10 remarks will be transcribed and referred to by the  
11 entire Commission at a later point. Those who do not  
12 hear them today will make use of them, in any event.  
13 So, the sparse attendance of Commission members here  
14 should not affect the depth at which you may approach  
15 the problem of the education articles of the Constitution.

16 I am Mrs. Bothe and I am chairman of the  
17 Miscellaneous Provisions Committee which is one of the  
18 committees and the committee that has primary concern  
19 with the educational articles of the Constitution. Let  
20 it not be thought because it was assigned to Miscellaneous  
21 Provisions that it is an anomalous concern of the



1 Commission. It so happens that the other committees are  
2 the Legislative, Judicial and the Standard Portions of  
3 the Constitution.

4 The educational provisions are the most im-  
5 portant assignment of our Committee and will receive a  
6 great deal of attention. Mrs. Freedlander is a member  
7 of the Miscellaneous Provisions Committee and also the  
8 Committee on Elective Franchise and Declaration of  
9 Rights which is concerned with the educational pro-  
10 visions in the Declaration of Rights.

11 Mr. Eney, I am sure, many of you are familiar  
12 with. He is the Chairman of the Commission itself and  
13 Mr. Brooks, over there, is our executive director.

14 I told Dr. Pullen who has a bad cold and is  
15 a very busy man, besides that, that I would let him go  
16 first, before he lost his voice, and he thought that he  
17 had enough to go on, so long as the morning doesn't go  
18 along much further. So, I will ask him if he wants to  
19 be the first speaker and to give us some of his views.

20 DR. THOMAS G. PULLEN, JR.: Mrs. Chairman,  
21 I appreciate it. I don't want you to feel sorry for me.





1 I feel perfectly all right, but my voice is none too  
2 good and I feel that it would be best for me to finish,  
3 if you will let me talk, and I can leave you. I would  
4 like to use this as the basis of a written report that  
5 I should like to make to the Commission. I don't think  
6 I am presumptuous because in the letter that Mr. Brooks  
7 sent, he suggested that we do just that and, with your  
8 permission, I will make it as brief as I can and I will  
9 file a written report later.

10 I think, from the standpoint of education, we  
11 are very much concerned as to the reason for the change  
12 in the Constitution. I am not objecting, Mrs. Chairman,  
13 Mr. Eney, at all to this. I think it is always wise to  
14 review this, but I think that we should put our purpose  
15 in the light, before the people, so we know exactly what  
16 we are trying to get at.

17 I think there are three problems. One is  
18 housekeeping. Now, if the purpose of revising the  
19 Constitution is simply to tidy things up, then I think  
20 we're wasting time. Another thing, I think it is very  
21 destructive, for this reason. So many court decisions





1 have been based upon the former statements, and I'm no  
2 lawyer, but I suspect that many of those would be thrown  
3 out or there would be different interpretations.

4 The second one, and there is some danger in  
5 this, the second purpose could be to take something out  
6 of that that we don't like. Now, the only trouble about  
7 that is that not everybody likes the same thing. Some  
8 people like to take out something and somebody else would  
9 like to take out something else. I am going to spell  
10 this one out very frankly because this illustrates what  
11 is inherent in that approach, the purpose.

12 For instance, there is a provision in there,  
13 I forget the exact number, which says that the estimates  
14 of the judiciary, the State Department of Education for  
15 the support of public schools shall be included in the  
16 governmental budget without revision and when passed by  
17 the legislature shall become the law, without signature.

18 So, that has been a godsend on more than one  
19 occasion because some governors -- and I'm not talking  
20 about Maryland, now -- but, over the years, some governors  
21 have ruthlessly cut the budget by various means, one, by



1 not putting the appropriations in there and the other  
2 by some legal device or constitutional device of elimina-  
3 ting them or cutting them down later on. I think that  
4 is one of the finest provisions.

5 Two or three times in my experience, or rather,  
6 in Mr. Cook's experience, there was an attempt to elimi-  
7 nate that. Frankly, I think that would be the most  
8 deleterious thing you could do to the public schools in  
9 Maryland, if there were any attempt. I cite that as a  
10 possibility. I cite that as one of the things that could  
11 happen if the approach of this were destructive.

12 The third approach, it seems to me, is con-  
13 structive. Let's go back to 1867, when this Constitution  
14 was developed or prepared. It came after a period of  
15 strife. It was in force somewhat by the congress in  
16 most of the southern states and it was not there written  
17 in the light of racial prejudice only. I think, if I  
18 may get in a little advertising, that probably the  
19 finest single book on reconstruction I have ever read --  
20 do you want me to take five or ten minutes?

21 THE CHAIRLADY: Five or ten minutes. We





1 might have some questions to ask you.

2 DR. PULLEN: I'll try to anticipate the  
3 questions. I think probably one of the finest books,  
4 a single book written on reconstruction and what it  
5 meant from the standpoint of government was written  
6 by Dr. Blake who is now head of the history department  
7 of the University of Baltimore. For twenty years he  
8 was in the archives. That book is called William H.  
9 Mahone of Virginia, who was a general. He started the  
10 reconstruction movement or the readjustment movement  
11 and he had great power in that State for some years.  
12 In this book Dr. Blake points out that the Constitution  
13 of Virginia, and this is true of all the southern states,  
14 was a reaction against what he called "Mahonism," a  
15 system of government in which certain selected ones were  
16 favored.

17 You will find that this constitution attempts  
18 to do that. The very first article says it shall have an  
19 efficient system throughout. My interpretation of that  
20 has been different a lot of times from other people,  
21 particularly people appropriating money. To me, it is





1 quite clear, but the intent there was to see that every  
2 child in Maryland had a decent education. So, I think  
3 from that standpoint it is highly important.

4 I would like to comment on Article 3, in which  
5 it says the Constitution -- I can't quote it -- that  
6 should be kept inviolate for the purposes of education.  
7 Some people think that applies only to religion; that is  
8 Article 8, Section 3. Now, that was put in there for  
9 a specific purpose.

10 In 1867, along in that time, the reconstruction  
11 legislatures were appropriating vast sums of money os-  
12 tensibly for the purposes of education and then turning  
13 around and diverting it to other purposes. They did it  
14 to the University of Maryland, they did it to every  
15 university. They did it to every school system in the  
16 south, and if you think that is a danger long past, you  
17 are sadly mistaken. The State of Alabama less than ten  
18 years ago, I think it was ten years ago, diverted  
19 \$1,000,000 from the school fund to build a hospital.  
20 That is not an unusual danger, and I think that one  
21 purpose, I think that one statement should stay in there.



1           Now, I think, when we begin to write the  
2           Constitution, we must approach it from a constructive  
3           standpoint. This doesn't mean a long-winded affair at  
4           all. It can be done in a very few lines, but what you  
5           are doing here when you rewrite the Constitution of  
6           Maryland, you are rewriting the school system of  
7           Maryland. Not only on the public school level, say from  
8           the elementary to high, but preschool, which is most  
9           important, and higher education.

10           I am going to throw one in here gratuitously.  
11           I think this, and I think this is a matter of government,  
12           I think that any public institution ought to be open to  
13           everybody qualified, irrespective of his status, finan-  
14           cially or otherwise. That carries you into the field  
15           of higher education which in Maryland, and in any number  
16           of states, one is deprived of a higher education because  
17           he can't afford it, and we are raising fees constantly  
18           and denying youth that opportunity. I think it ought to  
19           be written into the Constitution, something of that sort;  
20           just exactly how it would be done, I don't know. I think  
21           controversial statements that we are constantly fighting





1 should be written in there, statements concerning the  
2 controversial issues should be written in there so  
3 clear-cut as to leave no question. We would settle a  
4 lot of these things.

5 By the way, I would like to ask the Chairlady  
6 this question, and it is purely gratuitous. Has any  
7 state ever taken the Federal Bill of Rights for its own?  
8 Have they been the same?

9 THE CHAIRLADY: Are you asking me?

10 DR. PULLEN: Yes.

11 MR. ENEY: Exactly the same?

12 DR. PULLEN: Yes.

13 MR. ENEY: I think, one or two, but I don't  
14 think they remained exactly the same all the way through.  
15 Of course, the language cannot be exactly the same be-  
16 cause the Federal Bill of Rights is directed against  
17 state action.

18 DR. PULLEN: I beg your pardon?

19 MR. ENEY: The Federal Bill of Rights is  
20 so largely directed against state action that the  
21 language cannot exactly be the same. The essence of it





1 is.

2 DR. PULLEN: The thing I'm thinking about  
3 here, if the Bill of Rights, and this involves education,  
4 if the Bill of Rights of the Federal Government and the  
5 state government were coincidental, we would probably  
6 eliminate a lot of problems we have. I see the legal  
7 reason that you cannot use the same language, because of  
8 the approach, but certainly the principle is the same.  
9 I'm just wondering if a lot of our problems would not  
10 be settled if we rewrote that, because it does affect  
11 education.

12 There are some general comments, I'm going to  
13 hit them briefly, and put them in the written report.  
14 The professional people in education should be pro-  
15 tected in their jobs. Professional people on every  
16 level should have the right of discussion of their prob-  
17 lems with the duly elected officials. That gets to be  
18 highly important. Furthermore, I think no man in public  
19 office who has any right or power of making any decision  
20 affecting education -- or rather, I'll put it this way;  
21 that every individual who holds a position of trust in



1 which he passes upon education should have educational  
2 standards. It should be educational standards, but in  
3 another way, it should be set up and required for every  
4 public official who in any way passes upon the processes  
5 of education.

6 Furthermore -- and I won't take your time  
7 this morning, and I can certainly say this without any  
8 feeling whatsoever. My personal relationships with the  
9 governors of Maryland and particularly with the legis-  
10 lature have been most pleasant, but we have in Maryland,  
11 according to a statement made to me by one of the most  
12 distinguished judges that I have known in this State, is  
13 that we have the most rigid executive budget, which  
14 means that nothing can be put in the budget except those  
15 things required by law, unless the executive approves  
16 it; and if you want to raise one cent, for instance, the  
17 salary of any individual in Maryland, in any position,  
18 you've got to pass a special act of the legislature,  
19 which means a terrific amount of control in the hands of  
20 one or two individuals who often are advised -- and this  
21 is quite impersonal -- who are often advised by people





1 who are incompetent to advise, who have limited educa-  
2 tional backgrounds, who have limited interests in educa-  
3 tion and, consequently, the children of this State and  
4 the citizens of this State suffer.

5 If I were running for the governorship of  
6 Maryland -- and this is no pronouncement, please -- one  
7 of the things I would argue for is greater power of  
8 representative government and more of the voice of the  
9 people. Let me cite two cases of that. In North  
10 Carolina, for instance, they do not permit the right  
11 of veto on the grounds -- as Woodrow Wilson said, free  
12 men need no guardians. In the State of Massachusetts  
13 they have what they call a right of free petition, which  
14 means any citizen can present a bill and it must be  
15 considered.

16 I think the greatest weakness today in local  
17 government is that the power, under the new political  
18 theory, the power of the representatives is limited,  
19 greatly limited and the new political theory on that,  
20 the elected official must have all power to do the  
21 things he wants to do. But, suppose he is stupid?





1 Suppose he doesn't know? Suppose he is well-intentioned,  
2 but doesn't know what to do?

3 Frankly, I think this. I think we must let  
4 the people come in and express themselves, and then  
5 finally, I remember, I think it was a day or two after  
6 I was appointed State Superintendent of Schools,  
7 Governor O'Conner called me down and said, I want to  
8 tell you, first of all, about a lesson I learned inside  
9 of a couple of years that I've been here. He said, I  
10 thought when I became Governor all I had to do was, for  
11 the school people, was to give them the money they asked  
12 for to the best of my ability and to get it passed by  
13 the legislature and that would be the end of it, but,  
14 he said, I've learned one thing, that education cuts  
15 across every function of government and I went through,  
16 I went through the twenty-one, I believe, articles of  
17 the Constitution and education is in every one of them  
18 practically.

19 I think, in this connection, we must recog-  
20 nize in some way in the Constitution and put restrictive  
21 powers in the operation of government for education,



1 because that is the only safe guardian, the only safe-  
2 guard that we have to be free people, if we can learn as  
3 free people, if we have the opportunity; but when our  
4 opportunities are restricted by any kind of device,  
5 well-intentioned or not, then we cannot be a free people.

6 I am most concerned about this. I am particu-  
7 larly pleased that you have such a representative as the  
8 Chairman of this Commission. I have the greatest con-  
9 fidence in him personally and professionally, and the  
10 other people, but this is a very dangerous and a very  
11 important thing, for this one reason. We are plotting  
12 the course of government of the people of this State for  
13 some time to come and I think you've got to do it in the  
14 light of the purpose. Thank you.

15 THE CHAIRLADY: I neglected to introduce Dr.  
16 Harry Bard who is here wearing two hats. He is a member  
17 of the Commission, as well as a person who probably  
18 doesn't need any introduction to everybody in this room,  
19 but I did want to call your attention to the fact that  
20 he is a member of the Commission.

21 Dr. Bard, if you have any particular questions





1 as a Commission member that you want to direct, please  
2 feel free.

3 Dr. Pullen, several weeks ago in this room  
4 we had the former and present Governors of the State of  
5 Maryland address us and I, for one, was quite intrigued  
6 with some remarks that former Governor Lane, who is the  
7 Honorary Chairman of this Commission, as well, made with  
8 regard to the inviolacy of school funds. He made them  
9 somewhat offhandedly, but he indicated that there was a  
10 certain amount of flexibility involved here, and I  
11 wonder if you could comment on that, as a practical  
12 matter, from your experience?

13 DR. PULLEN: Well, Governor Lane in my opinion  
14 is probably one of the two or three most enlightened  
15 statesmen that I ever knew.

16 THE CHAIRLADY: He thinks very well of you.

17 DR. PULLEN: Good. I didn't know he said that,  
18 but I say that for several reasons. First, the man is  
19 educated. The man has a deep sense of government and he  
20 wants to do the right thing and, above everything else,  
21 an official in Maryland could sit down with Governor Lane





1 and talk the basic principles, which is not true always.  
2 Yes, Governor Lane has taken a simple incident there to  
3 tell you how a problem could be ironed out, and I think  
4 it quite appropriate for me to tell you what it was.

5 The estimates of the State Department of  
6 Education are based upon in part the assessable basis  
7 as given to us by the State Tax Commissioner. If they  
8 needed, in those days, possibly a quarter of a million  
9 dollars -- I've forgotten exactly what -- say a half a  
10 million out of a couple of hundred million, that is all  
11 right. I don't remember exactly. Now, how can you do  
12 it?

13 Everybody knows in the Department, everybody  
14 in the Budget Director's office knows it, the legislators  
15 know it, that if you simply change your estimate of the  
16 number of the assessable basis, you have cut down the  
17 State budget because your tax is predicated upon this  
18 assessable basis. It is a very simple thing to do and,  
19 frankly, that is the way you build up your surpluses,  
20 by the simple device of making an estimate. I don't  
21 mean to imply any motives or to say that it is necessarily



1 wrong, but it is a guess, at the most, and if you shift  
2 that, if you study the circumstances of the State of  
3 Maryland for the last twenty-five years, you will find  
4 they were from 30,000,000 down and you can manipulate,  
5 if you so wish, the surpluses of this State every year  
6 very easily.

7 Now, in that particular case, we had a very  
8 simple thing to do and we were quite willing to accept,  
9 as the law requires, the estimates of the State Tax  
10 Commission. A lot of these things can be worked out,  
11 frankly, but don't put the club in the hands of one or  
12 two people over all the children of the State of Maryland.

13 MR. ENEY: Dr. Pullen, may I ask you a ques-  
14 tion along those lines?

15 DR. PULLEN: Yes, sir.

16 MR. ENEY: It has been suggested to the  
17 Commission that in redrafting the Constitution, that  
18 every effort be made to eliminate all unnecessary  
19 details, to make the document terse and brief, and you  
20 have been suggesting several particulars this morning  
21 that additional provisions be put in the Constitution



1 with respect to education.

2 I am not quite clear just what you advocate  
3 in this regard. Let me ask you specifically as to cer-  
4 tain areas. It has been suggested that the Governor's  
5 control over State agencies should be greater than it is  
6 now and that many independent boards should be made  
7 advisory only and the head of the department under that  
8 board be made accountable directly to the Governor. If  
9 that were applied to the Department of Education and  
10 the State Board of Education would become advisory and  
11 the Superintendent of Education would be responsible  
12 to the Governor rather than to the board, would you  
13 think that desirable or undesirable?

14 DR. PULLEN: I think that is the most danger-  
15 ous thing you can possibly do to public education in the  
16 country. Alaska has done it, Hawaii did it. Mr. . . .  
17 Byrd did that in Virginia. As soon as he became Governor,  
18 the first thing he did was to make the Superintendent  
19 appointed by the Governor. You simply make a sycophant  
20 out of a professional. You simply put your whole pro-  
21 fessional career in the hands of a politician. I say





1 that not critically at all. That in my opinion -- that  
2 was suggested years ago in Prince Georges County, to  
3 eliminate the Board of Education and make it part of the  
4 County. I told the Superintendent, I said, I know the  
5 result. You will put the school system on the level of  
6 the sewer system.

7 I think it would be highly dangerous to put  
8 in the hands of any one individual, elected or otherwise,  
9 the education of the youth of this State. Let me give  
10 you an instance. I think one of the dangerous practices  
11 in the State of Maryland is legislating through the bud-  
12 get, and yet we owe to that practice one of the greatest  
13 things that ever happened. For instance, the Governor  
14 can put into the budget an appropriation and the legis-  
15 lature passes it, and it's an easy way of getting it  
16 passed. If he wants it, it becomes -- you have the  
17 appropriation. We did that for the junior colleges.  
18 That is the way we started. Governor O'Conner put  
19 \$10,000 in there. Governor Tawes a few years ago wanted  
20 to do something for the teachers of the State. So, he  
21 put in \$500,000, one man. I approved of it. I thought



1 it was wonderful, but I didn't like the way it was done;  
2 \$500,000 in the budget to pay the teachers of the Univer-  
3 sity of Maryland.

4 I think you are subverting the democratic  
5 representative practice when you do that. I'm talking  
6 about government.

7 MR. ENEY: In that situation, the legislature  
8 could have eliminated it, could they not?

9 DR. PULLEN: That's true, but this is an easy  
10 way to get it over. I think it's wrong. The legisla-  
11 ture is the representative of the people and the division  
12 of power, as you well know, when you put the legislative  
13 power in the hands of the executive, it is tyrannical.

14 MR. ENEY: Did your comment earlier about the  
15 Governor's control on the budget go so far as to espouse  
16 the idea that in matters of education, at least, the  
17 Governor had even less control than he has now?

18 DR. PULLEN: Yes.

19 MR. ENEY: Can you be more specific?

20 DR. PULLEN: Well, every salary in the  
21 University of Maryland, every salary in Baltimore College



1 and every salary in any State institution is set by the  
2 Governor, practically.

3 MR. ENEY: What would you substitute for this?

4 DR. PULLEN: I would substitute an over-all  
5 appropriation set by the legislature. You see, here is  
6 the point, Mr. Eney. We are overlooking one factor.  
7 When the Governor makes a budget, the legislature cannot  
8 raise that budget at all, unless it applies a new tax.  
9 This goes back to Governor Ritchie's days, when you had  
10 a very highly intelligent, powerful official and it was  
11 done with the hard-money policy, but it subverts repre-  
12 sentative government, if you cannot have any authority.

13 What is the logic of giving a representative  
14 body the right to lower, but not to raise without a  
15 special tax?

16 MR. ENEY: Well, I am not clear yet as to  
17 what you are suggesting. Are you suggesting that the  
18 legislature have the power to appropriate without having  
19 the obligation to raise the money?

20 DR. PULLEN: No, not at all. I don't see how  
21 you got that impression.





1 MR. ENEY: You said they can raise now only  
2 if they provide a special tax.

3 DR. PULLEN: That is exactly right, but what  
4 I did say was this, that if the Governor puts -- he  
5 decides, and this is not an attack on any individual,  
6 gentlemen. This is on government. I don't think the  
7 whole educational system of the State, the salaries of  
8 all the people should be determined by one man, and that  
9 is exactly what it is, particularly if you've got the  
10 work and the control of the legislature that the Governor  
11 of Maryland has.

12 MR. ENEY: Again, I am not clear. Are you  
13 suggesting that this control be vested in the legislature  
14 or in the Regents, in the case of the University of  
15 Maryland, or in the State Board of Education, in the  
16 case of the public schools?

17 DR. PULLEN: I would say no. I think the  
18 legislature is the final authority and I would say this,  
19 that the greatest criticism, and I've had forty-some  
20 years of experience in the State of Maryland and I think  
21 it's the greatest place in the world, we're civilized and



1 so on, but I do say this, that over the years we have  
2 tended in this State to weaken representative government,  
3 and I am the chief sufferer. Not personally, but I am  
4 thinking now over the years -- well, we're all involved,  
5 but only because the people of the State wanted education  
6 and they fought, but what about a lot of other depart-  
7 ments?

8 THE CHAIRLADY: I wonder, Mr. Eney, I see Dr.  
9 Paquin sitting patiently who I assured would be able to  
10 leave by 11 o'clock, and I certainly do not want to miss  
11 hearing from him or cut off this very interesting area  
12 of exploration by you. Could you remain and let Dr.  
13 Paquin make his remarks, Dr. Pullen?

14 DR. PULLEN: Surely.

15 THE CHAIRLADY: I have some other questions  
16 for you, myself, and I know Mr. Eney isn't through.

17 DR. LAWRENCE G. PAQUIN: Madam Chairlady,  
18 members of the Committee, you pose a dilemma to me. I  
19 might say, as a newcomer, new citizen of Maryland, I  
20 listened to Dr. Pullen in this exchange with considerable  
21 interest because it does begin to give me more and more



1 insight into the background of the fundamental law of  
2 this State, namely its Constitution. I really wonder if  
3 there is much point in my being here this morning other  
4 than for my own education, but at the risk of speaking  
5 as one who has relatively little experience with this  
6 Constitution, I am daring to suggest a couple of things  
7 as they appear from, let's say the one-time outsider's  
8 point of view.

9 I was very much impressed by what Dr. Pullen  
10 has said, particularly from the point of view of the  
11 whole business of representative government and its  
12 place in our society. If I understood you correctly,  
13 Dr. Pullen, you were saying too that this Constitution  
14 goes back to 1867, and I gather this is probably the  
15 first major revision of this document in 100 years. Is  
16 this correct?

17 DR. BARD: That is correct.

18 DR. PAQUIN: And I think this is particularly  
19 significant because I've been brought up on the principle,  
20 and I think it's one which I feel is very critical in  
21 this whole concept of democracy that we cherish in this





1 country, namely the people get the kind of government  
2 they deserve. I think it is very encouraging that we  
3 have a group now really taking a good hard look at the  
4 basic or the fundamental law of this State to see what  
5 can be done, and I agree with you, Dr. Pullen, that  
6 certainly the look that should be taken is the con-  
7 structive point of view.

8 I was sent two sections of the Constitution,  
9 Article 43 of the Declaration of Rights and Article 8 of  
10 the Constitution, and I looked those over rather care-  
11 fully and I throw these suggestions out for your con-  
12 sideration.

13 The suggestion has been made that this Com-  
14 mittee has already been propositioned on the idea of  
15 having a terse, brief document. This is one with which  
16 I would concur. I think it is very interesting that the  
17 Federal Constitution is a much briefer and a much shorter  
18 document than most state constitutions. State consti-  
19 tutions usually run to almost interminable lengths and  
20 they seem to be predicated on an idea that everybody is  
21 not to be trusted or one has to spell out some of the



1 details so specifically that you cannot rely on the good  
2 sense and the good judgment of those who might be holding  
3 public office.

4 As I look at Article 43 -- let me go back  
5 just a bit. I would urge, too, that in the drafting of  
6 any constitution, and I don't know of any constitutional  
7 convention that has ever done this, that somewhere along  
8 the line a good editor be brought into the act, someone  
9 who knows how to write, who does look at this from an  
10 editorial point of view, so that it is in a well-written  
11 manner. I think this is very critical because this does  
12 avoid some ambiguities and inconsistencies that frequent-  
13 ly creep into these documents.

14 Looking at Article 43, I was quite interested  
15 in this. This presumably states the purpose, the reasons  
16 why we need a public school system, and I find one, to  
17 me, at least, one purpose of public education conspicu-  
18 ous by its absence and I would presume to suggest to  
19 this Committee that consideration be given to the idea  
20 of including in this section the idea that public  
21 education is important in the development of effective



1 citizenship and the transmission from generation to  
2 generation of what we, I think, would call our democratic  
3 heritage. I find no mention of this at all in Article  
4 43, and I certainly consider this to be as important as,  
5 shall we say the promotion of manufacturers or agricul-  
6 ture or something of that sort.

7 I would also suggest perhaps that this be  
8 written in simpler and more precise terms. This is one  
9 of the reasons why I think of the need for good editing.  
10 I hold up as an example the preamble to our Federal  
11 Constitution, we, the people. I think we all know what  
12 that says. It says it succinctly, it says it clearly  
13 and it has withstood the test of time.

14 The other comments I have really are questions.  
15 I'm a little curious as to why there should be included  
16 in Article 43 of the Declaration of Rights the sentence  
17 which has to do with, or the stipulation, really, regard-  
18 ing the assessment of farmland. I can see where certain  
19 individuals and certain groups might feel this is an im-  
20 portant stipulation. I really question, not so much its  
21 inclusion in the document, but rather its inclusion in





1       that particular context.

2               MR. ENEY: The explanation, if I may inter-  
3 rupt, Dr. Paquin, is that that was a recent amendment  
4 and they didn't know where else to put it.

5               DR. PAQUIN: I see. All I am saying is that  
6 to my observation it seems to be out of context now.

7               MR. ENEY: It certainly is.

8               DR. PAQUIN: But I suggest we take another  
9 look and find some other place for it, if it is impor-  
10 tant that it be included. I had raised the question of  
11 what do we mean by thorough and efficient, and Dr. Pullen  
12 touched on that, when it is suggested here that we have  
13 a thorough and efficient system of free public schools.  
14 And I gather, what you are saying, Tom, is this, that  
15 by that we are saying that this State shall provide free  
16 public education for all children, all the children, of  
17 all the people?

18              DR. PULLEN: That's right.

19              DR. PAQUIN: Then, for heaven's sake, let's  
20 say it that way and not say it by words which may mean  
21 different things to different people.



1                   Finally, and I assume this will be up for  
2 discussion today; I only this morning had a chance to  
3 look at Article 3, Section 52, which I gather has been  
4 pretty much a bulwark of public education. This is the  
5 section of the State Constitution which has to do with  
6 the whole business of the funding or support, financial  
7 support for public schools.

8                   The impression that I get, and I concede it  
9 is only an impression, is that this section of the State  
10 document has functioned well and my inclination is if it  
11 is working, let's leave it alone. Thank you very much.

12                  THE CHAIRLADY: Thank you, Dr. Paquin. Dr.  
13 Pullen, can we put you back on the hot seat?

14                  DR. PULLEN: Yes, ma'am. I am used to this.

15                  THE CHAIRLADY: Dr. Bard is very anxious to  
16 ask you a question or make a comment.

17                  DR. BARD: I would like to ask a question.  
18 Dr. Pullen, since you are now in higher education, I  
19 would like to ask you whether you believe that there  
20 ought to be a statement dealing with higher education  
21 within the Constitution itself? There are a goodly



1 number of state constitutions that include phrases or  
2 clauses, and even in the case of, I think it is Missouri

3 THE CHAIRLADY: Massachusetts, with regard  
4 to Harvard.

5 DR. BARD: Well, Massachusetts has a large  
6 description as to the role of Harvard, et cetera, and  
7 Missouri actually goes into the community college law  
8 of Missouri at this time, and that is a fairly recent  
9 one. Would you include in the Constitution any state-  
10 ment with respect to higher education?

11 DR. PULLEN: I thought I touched on that,  
12 Dr. Bard. Yes, I would. I don't know exactly how I  
13 would write it, but I should certainly provide for the  
14 establishment, the proper conduct of and so on. Then  
15 I would write in there a provision -- I think this is a  
16 general provision with respect to education, but it cuts  
17 across all government -- that no function of government  
18 shall be denied to any individual, to any qualified  
19 individual for any reason whatsoever.

20 I am trying to get the point over here that  
21 in Maryland we are denying higher education to people





1 because of the cost.

2 THE CHAIRLADY: You feel there should be a  
3 constitutional provision that all State-supported schools  
4 be open without charge to all qualified people?

5 DR. PULLEN: Theoretically, in principle,  
6 yes, I agree with that.

7 THE CHAIRLADY: Do you think it is feasible  
8 to have such provision, economically feasible?

9 DR. PULLEN: Yes. I go further than that.  
10 I think the same thing would apply to kindergartens and  
11 nursery schools.

12 THE CHAIRLADY: And this should be in the  
13 Constitution itself?

14 DR. PULLEN: The only reason you do not --  
15 the only reason we are having the situation we have today  
16 with respect to preschool education and higher education  
17 is that the Constitution does not spell it out. I am  
18 not a constitutional lawyer and I wouldn't dare, in the  
19 presence of Mr. Eney, to even suggest that I know any-  
20 thing at all, but I do know something about rights and  
21 I do know something about logic and I do know something



1 about the commonwealth which people have come together  
2 for their own interests and their own protection and,  
3 when one individual is denied it, we are certainly  
4 doing something inviolate to our constitutional rights.

5 MRS. FREEDLANDER: You mentioned, Dr. Pullen,  
6 the reason we do not have kindergartens and higher educa-  
7 tion, that it is not spelled out. We in the Committee  
8 have felt that the conciseness of this provision would  
9 allow for -- it says free public schools, which is not  
10 limited. It would not "delimit," so to speak, kinder-  
11 gartens and higher education.

12 The Committee has felt, and I would like you  
13 to speak on this, if you will, please, that our school  
14 code is so extensive that it is better to have items  
15 pertaining to public education in statutes, where they  
16 could be changed, revised, improved, than in a consti-  
17 tutional provision which takes a long time to change.

18 DR. PULLEN: Well, I'm not so sure. Frankly,  
19 I think the people would pass a constitutional amendment  
20 on those things quicker than the legislature. In other  
21 words, we set up all functions of the government.



1 Generally, your judiciary is set up by the Constitution.  
2 Practically every function of government is set up by  
3 that. The Governor is a constitutional individual, and  
4 in some states the State Superintendent of Schools is  
5 a constitutional object. The great thing we have to  
6 watch for here in Maryland is that little trend to put  
7 the State Superintendent of Schools, to make him  
8 appointed by an elected official, that that is not put  
9 in the Constitution. That is a movement, and the whole  
10 thing of it is that you put it to this new political  
11 theory that the elected official must be all-powerful;  
12 otherwise, you can't get things done.

13 Look at it this way. He can get bad things  
14 done as well as good things done, and I don't believe  
15 in putting government in the hands of any one individual  
16 or even two or three individuals in the State. I believe  
17 in representative government, both State and national.

18 MRS. FREEDLANDER: You spoke of the fact that  
19 the Governor has, I think you used the words complete  
20 control, one-man control over the budget, and this  
21 applies to education.





1 DR. PULLEN: No, no. I beg your pardon.  
2 That is this amendment -- that is this provision in the  
3 Constitution that does not permit him to do that. That  
4 is what we don't want you to change.

5 MRS. FREEDLANDER: But the provision in the  
6 Constitution states very succinctly that the General  
7 Assembly, and even Article 3 is a legislative article;  
8 so that under the existing Constitution, the legislature  
9 really has a great deal to say. Article 8 says the  
10 General Assembly shall by law -- it doesn't say the  
11 Governor shall by law.

12 DR. PULLEN: That is, neither the legislature  
13 nor the Governor can change the estimate for public  
14 education unless they do one thing; unless the legis-  
15 lature changes the law. You see, it is saying that  
16 there is no manipulation of the money for the children.  
17 Here is where schools suffer, now, unless you have the  
18 political power to put it over. They suffer when it  
19 comes to physical facilities and colleges and univer-  
20 sities and the like. It all depends upon the opinion and  
21 attitude of two or three people.



1 MRS. FREEDLANDER: Isn't true that the exist-  
2 ing Constitution does state that the General Assembly  
3 shall establish free public schools?

4 DR. PULLEN: Yes.

5 MRS. FREEDLANDER: It is already in the hands  
6 of the legislature.

7 DR. PULLEN: In the final analysis, I'm not  
8 quite sure we're on the same point here. What I'm trying  
9 to say, from a practical standpoint, the Governor puts  
10 in -- he has to put in his budget the appropriations for  
11 schools according to law, public schools, but he can  
12 also go in there and put in the budget a lot of other  
13 things that he wants himself and the legislature -- if  
14 he has enough power, if he has enough patronage and  
15 enough veto power and so on, he can put in a lot of  
16 things. Again, I hope I'm not making charges. I'm  
17 talking about government, not personalities.

18 MRS. FREEDLANDER: But, in the existing  
19 formula which has been devised by you during your  
20 distinguished term as Superintendent of Schools, the  
21 whole question of the formula, which is so fine in



1 Maryland, was this not resolved with your approval,  
2 cooperation and perhaps it might have originated in  
3 the office of the Superintendent?

4 DR. PULLEN: That was done before, with  
5 Governor Ritchie and Mr. Cook and other people in the  
6 State, and it started with, and it started 100 years  
7 ago with Dr. VanBockler and Horace Manns, but it was  
8 written into law in 1922; but Dr. Goodnough who was the  
9 chairman of the commission who wrote the school laws of  
10 Maryland, which are considered as one of the finest in  
11 the country, spelled out the protection against the  
12 manipulation of that by anyone.

13 Let's go back to government again. I agree  
14 with Thomas Jefferson when he said that all government  
15 must be founded upon suspicion. Everybody, statesmen,  
16 every individual elected or appointed in the public  
17 schools should be under suspicion by the people who put  
18 them there. That is, I think, a truism, almost, in  
19 government, not predicated upon trust, but predicated  
20 upon suspicion that the frailties of human nature may  
21 cause him to do things that are not in the interest of





1 the people. Any official is the representative of the  
2 people and therefore accountable to them. That is why  
3 the State Board of Education in my opinion is probably  
4 the greatest body of its kind in the State because you  
5 let the State Board do something and all of the people  
6 in the State come after them, but there are a lot of  
7 other bodies, a lot of other boards who are not account-  
8 able because people don't know who they are.

9 MR. ENEY: Dr. Pullen, may I come back to  
10 the matter you were speaking on a moment ago, because  
11 it is not clear to me yet. Are you suggesting that  
12 free public education be extended from nursery school  
13 or kindergarten through college, a professional school,  
14 or what?

15 DR. PULLEN: I thought I said this, or this  
16 is what I meant to say. Yes, in principle. I would be  
17 cautious, to this extent. I would know where I could  
18 pay for it, but what are you going to do, Mr. Eney, if  
19 some parents -- and I think some parents ought to do this --  
20 if some parent brings a suit against the University of  
21 Maryland or one of the colleges saying that my child is



1 as well qualified as anybody else and he can't go because  
2 I have no money to pay the fees imposed by that group,  
3 and yet I pay taxes.

4 Now, I don't know whether it is constitutional  
5 or not, but in my book, it isn't. Logically, at least.  
6 It may be, legally, but I don't believe that as a process,  
7 as a matter of governmental function, that any child  
8 ought to be denied that right.

9 MR. ENEY: How far would you go?

10 DR. PULLEN: I'd go just as far as the State  
11 goes for one child as with another. That is a matter of  
12 policy.

13 MR. ENEY: You said you would put in the  
14 Constitution a guarantee that every child regardless of  
15 his circumstances would be entitled to education in  
16 college. Did you mean education through college? Did  
17 you mean that in the sense that a child, regardless of  
18 his capacity, mental capacity would be entitled to a  
19 college education or the attempt to get one in the same  
20 manner as a child is in grammar school, for instance?

21 DR. PULLEN: No, I'm using the word in a



1 qualified way. I am saying the same standards that  
2 students are admitted, everybody ought to be admitted  
3 on the same standards. I would like to broaden that,  
4 Mr. Eney, because this is important.

5 Over the years, the last thirty years, we  
6 fought for things like the education of the handicapped,  
7 regardless, mental, physical and so on. Why in the name  
8 of all that is right and proper and constitutional aren't  
9 those children as deserving of an education as somebody  
10 more fortunate, mentally or otherwise?

11 MR. ENEY: I don't quarrel with it. As a  
12 matter of fact, I quite agree with it.

13 DR. PULLEN: That's good.

14 MR. ENEY: But what I'm trying to get at is  
15 what your views are, not mine. In college education,  
16 for instance, Dr. Elkins recently suggested that the  
17 University of Maryland might have to adopt regulations  
18 which would raise the admission standards so as to  
19 exclude some persons who might want to go to college,  
20 but might not have the mental capacity. I am trying to  
21 find out whether you think that would be permissible at





1 the college level, even though it is not at the grammar  
2 school level?

3 DR. PULLEN: I think we are getting into two  
4 or three different points.. The question is what do you  
5 mean by mental capacities? What do you mean by standards?  
6 Standards are being changed constantly by colleges, as  
7 to admission, but I'm saying that you cannot deny, you  
8 cannot take one student that you consider qualified and  
9 turn down another one who is qualified because he cannot  
10 pay for it.

11 Now, I am not raising the question as to  
12 whether the institution should set standards or not. Of  
13 course, I think colleges have gone pretty wild on that.

14 MR. ENEY: What you mean is this, to be  
15 specific, Dr. Pullen; in public school education, as I  
16 understand it, every child is entitled to go to school,  
17 whether he has the same capacity or much less capacity  
18 than his neighbor. This is a matter of no concern. He  
19 is entitled to get whatever he can get out of public  
20 education.

21 Colleges don't apply that rule and some are



1 more selective than others who appear to enter only  
2 those who have perhaps higher ability to learn. What  
3 I'm trying to get at is whether you are suggesting that  
4 the colleges could still provide a free education, but  
5 within limits of the persons who could go by reason of  
6 their mental capacities?

7 DR. PULLEN: I think I see your point. Let  
8 us look at it this way, Mr. Eney. If the public schools  
9 do not take care of them, private institutions come  
10 along and do it for them. We will have this year between  
11 7500 and 8,000 students paying for their education. That  
12 is true of a lot of other private institutions all  
13 around. Now, not all of it is because they think they  
14 are getting a better education or getting this or that,  
15 and so on, but somewhere along the line public schools  
16 are not serving, and when I say public schools, I mean  
17 colleges and universities -- let's take a university.

18 If a university wants to apply itself to  
19 research and set up certain standards for that, all  
20 right. Even at public expense. But, if it does so, it  
21 has no right to make a distinction between two students



1 equally qualified, one who can pay the price and one  
2 who can't, when they are getting public subsidy and they  
3 are also getting subsidy from corporations, tax exempt,  
4 which is another thing of public support.

5 I just hate to see people denied an education  
6 because they can't pay for it. Does that answer your  
7 question?

8 MR. ENEY: Not exactly, but --

9 DR. PULLEN: Let's pin it down.

10 MR. ENEY: I think you indicated your views  
11 on it enough for my purposes.

12 DR. PULLEN: Let me talk about standards.  
13 Let me tell you two stories. The University of California  
14 has set up a system whereby it takes only the upper  
15 12½ per cent of its students and yet, its mortality,  
16 three or four years ago, according to an official docu-  
17 ment made by a University of Maryland professor, forty-  
18 five per cent -- I sat in a meeting in the Edison  
19 Institute in New York three or four years ago, in which  
20 the head of a college stated that his institution, in  
21 order to control the situation, they were going to raise





standards. Sitting on my left was the executive vice-president of one of the biggest corporations in America and he said, I want to serve notice on you, you and all the rest of you, that the first college that sets up standards to exclude the great mass of youth that are qualified to come into our business, my concern will be the first to stop its appropriations.

You see, most of the problems of life don't demand the attention of genius, Mr. Eney, and this thing of the public going out under that platonic nonsense of selecting certain individuals and training them at an expense which is paid by beggars as well as anybody else, this in my opinion is wrong. I started to use a worse word, but we'll settle for that one. It's undemocratic.

THE CHAIRLADY: A question by Dr. Bard?

DR. BARD: May I ask a question as a member of the Commission? Dr. Pullen, not just now, but sometime, if in this writing you could present to the Commission your analysis as to how the various provisions in Section 52 of Article 3 -- and I say this as Chairman of the Legislative Department Committee which has



1 responsibility for Article 3, major responsibility, not  
2 all of them and --

3 DR. PULLEN: What section is that?

4 DR. BARD: This is Section 52, Article 3.  
5 On at least three occasions there are discussions of  
6 two or three points that you have made and if, somehow  
7 or other, you could combine the ideas that are embraced  
8 in Subsection 4 of Section 52, Subsection 4, 6 and 11,  
9 particularly, and put them into more cogent terms, this  
10 would be extremely helpful for the Committee, and 6, as  
11 well. That's 4, 6, and 11, and would you include 12?

12 DR. PULLEN: Would you mind, when you go back  
13 to the office, writing that out for me? You lost me.

14 MR. ENEY: It's the budget amendment he's  
15 talking about. You are familiar with that.

16 DR. PULLEN: Yes, sir.

17 MR. ENEY: That is what he's talking about.

18 DR. BARD: Section 52, Article 3, 4, 6, 8  
19 and 11.

20 DR. PULLEN: By the way, Dr. Bard, that  
21 Section 12 ought to be added to Section 11 in there.



1 THE CHAIRLADY: I think our executive director  
2 would be happy to send the letter to you. He understands  
3 Dr. Bard's question and --

4 DR. PULLEN: I wouldn't fool with that one  
5 very much because that is the greatest safeguard to the  
6 children in Maryland, and I think you've got to have  
7 some way -- well, let's put it more positively. I think  
8 that if you're going to provide for, in the Constitution,  
9 as I think you should, for institutions of higher learn-  
10 ing, that you must provide an easier way to get buildings  
11 and equipment and not lag twenty years behind, as we have  
12 done.

13 You see, the decisions -- and again, I am  
14 making one simple point -- the decisions as to what  
15 happens to the education of tens of thousands of youths  
16 made by two or three people, and I'm not criticizing  
17 them as individuals. I'm saying that the people want  
18 this and they are not getting it because of the processes  
19 of government.

20 THE CHAIRLADY: Dr. Pullen, we certainly  
21 thank you for your wealth of ideas. If you can





1 supplement any of them in writing, and you say you will,  
2 we will be very grateful for your remarks and your voice  
3 held up very well.

4 DR. PULLEN: Very well. I'm sorry to impose  
5 on you and let me thank you very much for letting me  
6 come, Mr. Eney. I'm sure again, I want to say the  
7 deliberations of this body will be sound and in the  
8 public interest because of your leadership and because  
9 of the other people associated with you.

10 MR. ENEY: A pleasure to debate with you,  
11 always.

12 THE CHAIRLADY: Is Dr. Martin still here, from  
13 the Association of Independent Colleges? He indicated  
14 he wouldn't be able to wait very long. I see perhaps  
15 he hasn't been able to wait this long. Is there a repre-  
16 sentative from the University of Maryland?

17 DR. ALVIN KUHN: Dr. Elkins was not able to  
18 attend and I am here in his place.

19 THE CHAIRLADY: Oh, Mr. Burgess, we promised  
20 we would hear from you.

21 MR. LIONEL BURGESS: Members of the Committee,



1 my remarks will be very brief. I worked under Dr. Pullen  
2 for nineteen years. I believe I would endorse almost  
3 everything he said.

4 THE CHAIRLADY: Mr. Burgess, you are here as  
5 a representative of the Maryland State Grange.

6 MR. BURGESS: Right. I would point my  
7 direction to this question which was raised about the  
8 legislature may provide that land actively devoted to  
9 farming, agriculture shall be assessed on the basis of  
10 such use and shall not be assessed as subdivided. My  
11 guess is that the reason that was put in there is because  
12 of a like section of the Constitution in 1851 and 1864.  
13 This is just a guess, but my reason is the people in  
14 the rural districts would not care to see this dis-  
15 turbed. I don't know whether you want me to discuss it,  
16 but I think it is implicit and the words below, not to  
17 be assessed as if subdivided; there was a tendency on  
18 the part of the assessors to assess land because of the  
19 largest division of land in developments. So that farm-  
20 land was assessed higher and higher on the basis, not of  
21 agricultural use, but on developmental uses.



1 I think that is very simply what was behind  
2 that. We worked in 1960 to get this included and, as I  
3 say, my guess is it was there because of the Constitution  
4 of either 1851 or 1864.

5 I would like to direct my remarks just a little  
6 bit to Section 3 of Article 8. I have a quotation here,  
7 and I will not read it, but in Kentucky they had this  
8 same experience. The surplus funds which was given to  
9 the various states in 1837, Maryland got some of this,  
10 as did Kentucky, and they immediately began to divert  
11 that money to other purposes; and there seems to be this  
12 tendency in a number of states. Dr. Pullen has com-  
13 pletely covered this and I think I need not belabor it,  
14 but most of the people know something about this from  
15 the history of education and their own experience. I  
16 gave to Dr. Pullen -- he took it out with him -- House  
17 Bill No. 94, which is not the school fund itself, but,  
18 as you know, there is a bill in the legislature at the  
19 moment that, if passed, would give the State Roads Com-  
20 mission authority to enter into agreements with the  
21 retirement systems to buy land.





1           This is one of the illustrations which you  
2 have to deal with in the attempt to use school moneys  
3 for other purposes, and I think the retirement system  
4 is in a sense school money, although not part of the  
5 educational fund itself. And we have this experience  
6 in two other directions. One is the gasoline tax.  
7 There is a tendency once in a while to divert it from  
8 its main purpose, and also in the national government  
9 in the highway funds, you have a tendency to divert  
10 those funds which are directed to a particular purpose.

11           So, I would address my remarks to this and  
12 then generally and simply say that I would endorse, I  
13 think, everything that Dr. Pullen said. I would empha-  
14 size the matter of this control by the legislature in  
15 this, as being representative of the people. I told  
16 Dr. Cook back there, I think Dr. Henry Cooper, who was  
17 a professor of political science in Princeton, several  
18 years ago when all this dated back to putting tremendous  
19 authority in the hands of the governor, he sounded a  
20 warning way back there that this was a tendency for one  
21 person to control or a few people to control the State.



1           So, I think we are entering an era in which  
2 we probably ought to go a little more in the other  
3 direction, in putting a little more control in the  
4 hands of the legislature. This Article 8 gives this  
5 general power to the legislature. It has worked well  
6 since 1867. I would point out to you the fact that if  
7 you read Sections 1, 2, 3, 4 and 5 of, I guess it was  
8 Article 8 of the Constitution of 1864, there are about  
9 four pages where they spell out the organization and  
10 direction of public education in the State of Maryland  
11 and then, along in 1867, they reduced all this to what  
12 you see in the body of this, which gives to the legis-  
13 lature this general control and, of course, it works  
14 as a statute and it was in the law of 1916.

15           On this point, I would say, on keeping the  
16 funds inviolate, I remember a county school superinten-  
17 dent I served under who was appointed by the board in  
18 1900, the same time Dr. Cook was appointed, and then I  
19 worked with Mr. Huntington and Mr. Hirsch in Baltimore  
20 County and they touched on this quite frequently, on  
21 keeping the funds inviolate; but the late Senator Arthur



1 P. Garmand said this to my former superintendent, young  
2 man, remember this. Defend the schools as though they  
3 were sacred and inviolate. They are near and dear to the  
4 hearts of the people, and I think there is something in  
5 this word inviolate which carries a meaning to the  
6 people in connection with school funds which perhaps  
7 ought to be preserved.

8 I think that, generally, would be my remarks.  
9 Thank you.

10 THE CHAIRLADY: I have one question, Mr.  
11 Burgess. On your remarks pertaining to the inviolacy of  
12 agricultural land which is attached to Article 43 of  
13 the Declaration of Rights, I think we understand your  
14 point in wanting to retain the provision, but do you  
15 feel that it belongs where it is?

16 MR. BURGESS: Not necessarily so. I think I  
17 gave you my reason why I thought they selected this,  
18 because back there it deals with the matter of raising  
19 money from the -- it doesn't use the word general prop-  
20 erty tax. It's easy to look it up. I have it in my  
21 briefcase, but I will submit this in my remarks. Not





1 necessarily that it be retained in this part. We cer-  
2 tainly want it retained, but, I guess -- I told you the  
3 reason why I thought they chose it. Mr. Eney would know  
4 better than I would on that.

5 THE CHAIRLADY: Do you know of any other  
6 state constitutions which have such provisions?

7 MR. BURGESS: Yes. There are three or four.  
8 I can't tell you -- New Jersey has one now, such a pro-  
9 vision, and I know there are efforts being made in four  
10 or five other states to have such constitutional pro-  
11 visions. I guess this would be a general tendency  
12 particularly in the states on the eastern seaboard and  
13 on the west coast and perhaps maybe in the middle west.

14 THE CHAIRLADY: We certainly thank you, Mr.  
15 Burgess.

16 MR. BURGESS: Thank you very much.

17 DR. ALVIN KUHN: Madam Chairlady, maybe I had  
18 better give you my full name. It is Alvin Kuhn, vice-  
19 president of the Baltimore campus of the University of  
20 Maryland; until this past July, executive vice-president,  
21 working in College Park. Dr. Elkins is in bed with the



1 flu today, it seems to be going around, and he asked if  
2 I would appear here and speak briefly on an item that  
3 pertains particularly to the Constitution and to the  
4 University of Maryland.

5 This whole matter of education is one that I  
6 think we all attempt to find a way in which we can dis-  
7 charge our responsibilities with a reasonable degree of  
8 direct responsibility within the institution and yet, at  
9 the same time, the responsiveness or the approach of  
10 full inspection, full review by the people, by the  
11 legislature, by all who are concerned with State govern-  
12 ment. Specifically, I would like to talk about the  
13 possibility of the Constitution containing authority for  
14 the University of Maryland as an institution, authority  
15 for its Board of Regents to govern the affairs of the  
16 institution. I would like to say also that I am speak-  
17 ing here as a representative of the administration of the  
18 university. We would like to submit actually a position  
19 paper from the Board of Regents itself and I believe we  
20 will be in a position to do that after the March 25th  
21 meeting.



1 THE CHAIRLADY: We would be delighted to have  
2 it.

3 DR. KUHN: And that should be considered the  
4 official position of the university. In the course of  
5 teaching, research and all the many various activities  
6 that a university engages in, whether it is the Univer-  
7 sity of Maryland or any across the country, as a public  
8 university, it is not unusual for the research activities,  
9 the information that is dispersed or disseminated to be  
10 at variance with the popular thinking or the mood of the  
11 moment, and I think, more and more, the universities  
12 have come to be regarded as centers in which there must  
13 be constant search for the truth and when information is  
14 developed, new knowledge is developed, this must be dis-  
15 persed and disseminated, and while it in no way should  
16 govern the people -- all people should have access to  
17 this in their deliberations to determine from among  
18 various alternatives or courses of action.

19 It is not unusual when a university or its  
20 faculty or its administrative people are presenting an  
21 idea that is not necessarily in tune with the moment for





1 citizens, for the new members of the legislature to  
2 decide that perhaps it would be well to find a way to  
3 go to the root of the existence of the university and  
4 to, in fact, in one form or another control it. I think  
5 we've been very fortunate in Maryland in having good  
6 support from the citizens, good support from the legis-  
7 lature, a good opportunity to actually meet the needs of  
8 higher education as they have been a part of the activities  
9 of the university and yet you have seen during recent  
10 years direct attempts to change the authority of the  
11 Board, direct attempts to change the membership, various  
12 moves of that type that can in fact considerably lessen  
13 the authority of any board to really direct over a period  
14 of years the affairs of an institution, public insti-  
15 tution of higher education.

16 I think we are fortunate that across this  
17 country there has been developed the boards of regents  
18 or trustees. This is particularly an American insti-  
19 tution in which the continuing destiny of a particular  
20 institution is placed really heavily in the hands of  
21 this Board.



1           The extent to which they have been able to  
2 bring institutions along to make a real contribution  
3 to the state in which they exist has to considerable  
4 extent be dependent upon the authority that they have,  
5 the way in which they continue to exercise that authority  
6 and the way in which their work has resulted in general  
7 public support of the activity.

8           I think it would be of interest to the group  
9 and I am sure several of you are quite familiar with the  
10 fact that the constitutions in several states do main-  
11 tain provisions for the state university in the particu-  
12 lar state. I will cite these simply in the order in  
13 which the courts have upheld the constitution autonomy,  
14 if you will; University of Michigan, Michigan State  
15 University, University of California, University of  
16 Idaho, University of Minnesota, Oklahoma State Univer-  
17 sity. These are covered by specific provisions in the  
18 state constitution and the courts have pretty well up-  
19 held these as giving the opportunity for the particular  
20 boards involved to actually govern the affairs of the  
21 institution itself.



1 Not tested in court or clearly established  
2 are similar provisions for the University of Colorado,  
3 for the university system of Georgia. In many respects,  
4 the development of a constitution, the development of  
5 the governmental arrangements, if you will, of a particu-  
6 lar subdivision or a particular state is a matter of  
7 evolution, a matter of gradual development. I think in  
8 the original charters that were given to the various  
9 segments that later became the University of Maryland  
10 in 1920, the State was farsighted in its legislature in  
11 providing a good many responsibilities and authorities  
12 for the Board of Regents of these segments. When these  
13 were consolidated in 1920, the effectiveness of the  
14 charter was continued and, in 1952, the so-called  
15 Economy Act, the 1952-53 period which gave the opportunity  
16 for the Board under legislative authority to direct the  
17 affairs of the university was passed and has been of  
18 great value in the past twelve-year period.

19 I am sure that none would want extensive pro-  
20 visions in the Constitution itself for an item of this  
21 type. I think the very simplicity of several of the





1 constitutions across the country, the one in California,  
2 the one in several of the other states, and we'll be  
3 glad to give background information on this to the extent  
4 that it is of some value to the Committee, makes the  
5 opportunity for the particular boards involved to be  
6 effective in their work. I think always there is a need  
7 for limitation. Certainly, in all of these there is the  
8 importance of the continuing legislative control with  
9 respect to annual budgeting, which is a very powerful  
10 control, as you well know. The complete audits, the  
11 complete review of everything that an institution of  
12 this type may do and the airing of this in public docu-  
13 ments that are published on a regular basis. There is  
14 no question in the minds of any of us, I am sure, that  
15 state government is growing rapidly, that all phases of  
16 education are growing rapidly. To some extent, in this  
17 kind of a situation, there is a tendency today for a  
18 greater portion of decisions to tend to move into bureaus  
19 or agencies not directly concerned with the area, such  
20 as higher education.

21 The problem, of course, then is one in which



1 the public as a whole, I think undoubtedly in Maryland  
2 and across this country, looks to the board of the  
3 particular institution as being the responsible party  
4 for the success or failure of the institution and yet,  
5 by a gradual process of executive development in this  
6 State, the legislative committees, the actual governing  
7 of that institution can gradually pass out of the hands  
8 of the governing board.

9 This is the particular item I wanted to  
10 present to the Committee. I would be pleased to answer  
11 any questions.

12 THE CHAIRLADY: Would you be in a position  
13 to submit to us proposed language covering the existence  
14 of the State university in the Constitution?

15 DR. KUHN: We'd be very pleased to do that,  
16 Madam Chairlady, and I would say a brief position paper  
17 of how the Board of Regents itself feels on this; perhaps  
18 simple suggestive language and copies of pertinent infor-  
19 mation. There have been fine studies on this subject.  
20 One was headed by Dr. Eisenhower, of Johns Hopkins, a  
21 very fine publication. I believe this type of thing



1 would tend to give the Committee background on the  
2 particular item I brought to your attention.

3 DR. BARD: Dr. Kuhn, I would like to ask you  
4 a question as a member of the Commission rather than as  
5 one who will have some comments on higher education in  
6 terms of the institution which I represent at this end  
7 of the table. Would you, in this discussion of higher  
8 education, be willing to see this as a discussion which  
9 would embrace not alone the University of Maryland, but  
10 all aspects of higher education? In a short statement?  
11 I agree that we couldn't have the long statement, for  
12 example, that existed in the 1864 Constitution on  
13 education, such as what Mr. Burgess referred to just  
14 before your statement. How would you see this, Dr. Kuhn?

15 DR. KUHN: It would seem to me that we would  
16 have to be sure in any language that it really did give  
17 this authority to the Board to manage the affairs of the  
18 institution, and I am making this a very brief statement,  
19 but this involves very many things. I think if we re-  
20 duced this to a question of whether one simple statement  
21 giving the opportunity for the boards involved and the





1 universities, in the state college case and the junior  
2 college, I think this is a little different. The  
3 opportunity to govern tends to get over to the city and  
4 county there.

5 I would only say this one thing, and I hope  
6 you would shoot it at me any way you wish, Dr. Bard,  
7 because you know I have a very high opinion of your  
8 leadership in the total effort. I believe generally  
9 speaking this kind of autonomy leads to efficiency in  
10 any institution, if you have responsible leadership. I  
11 believe that when it is given to an institution, it  
12 takes a good period of pretty careful leadership to  
13 actually do all of the things that are involved in fully  
14 utilizing it. I have some feeling that any move toward  
15 this type of constitutional autonomy for the university  
16 would inevitably lead to much more legislative autonomy  
17 for other units and there may be something in the evolu-  
18 tion nature which we have now lived under legislative  
19 autonomy in the past ten or twelve years that might place  
20 us in an unusual position to actually utilize this  
21 constitutional authority.



1 DR. BARD: You said I could shoot at you.

2 DR. KUHN: Shoot away.

3 DR. BARD: On just one aspect of your state-  
4 ment, I was very much impressed, Dr. Kuhn, with your  
5 statement in regard to the necessity for clarifying the  
6 issue of academic freedom and the great importance in  
7 this connection. I am so glad that you made it. What  
8 I have in mind is this. It would certainly hold true,  
9 the whole matter of academic freedom would hold true  
10 equally for other higher educational institutions, as  
11 well as the University of Maryland and it would seem to  
12 me perhaps a statement of academic freedom at this level  
13 that would be broader than just applying it to the  
14 University of Maryland, but would apply broadly to the  
15 higher education that might have great value and then  
16 move on from there and make it clear that the bodies  
17 that are responsible for the various segments of higher  
18 education have the kind of autonomy which you have set  
19 forth.

20 What do you think of that?

21 DR. KUHN: Let me restate it again. I would



1 in no way ever talk against autonomy or any segment of  
2 education because I believe when it is properly used, it  
3 can be a real force towards efficiency in any segment.  
4 Now, the historic development, it seems to me, as I have  
5 watched here in Maryland for a brief year, it would  
6 appear, but I've watched it a long time, or across the  
7 nation, has been one in which academic freedom per se is  
8 very rarely attacked any more, not by direct route.

9 I think that the fine development across the  
10 nation as a whole is that in almost every state the  
11 selection in almost every segment of higher education,  
12 the investigation of the faculty members is now left to  
13 the board and the institution involved. I think this is  
14 so much a part of our existence today that no one would  
15 really ever take it away. I think we have the other  
16 tremendous safeguard and that is if in any governmental  
17 unit or any individual attempted to take away in your  
18 institution, in any junior college, in any four-year  
19 college, in any university, real academic freedom, that  
20 institution would cease to be accredited within a period  
21 of twelve to fifteen months and, when it ceased to be





1        accredited, its graduates are in a very difficult situa-  
2        tion, particularly those now coming through the mainstream,  
3        and so I think we have some fine safeguards built up  
4        there.

5                The tremendous problem that does affect all  
6        of us is that you can control academic freedom, you can  
7        control research activity by controlling purchasing, by  
8        controlling salaries of individuals that are being paid  
9        both on and not on the faculty area and it is in this  
10       kind of thing that the ability or authority of the  
11       board commands the affairs of the institution is very  
12       important. Now, if we can provide this in clear language  
13       for all of the segments of public higher education,  
14       certainly there is something to be said for doing this.

15               I think there is one item that particularly  
16       confronts a state university and I would say here, talk-  
17       ing specifically of the University of Maryland, and that  
18       is the extensive research work that is under way and the  
19       manner in which the division between the public in  
20       general and its needs and its desires to know more know-  
21       ledge and the research worker who used to be able to be



1 somewhat separated behind an ivory tower, if you will,  
2 this is becoming so much lessened in time and the terms  
3 of one knowing the other and the dispersible knowledge.  
4 Where you are creating new facts, you run much more  
5 frequently into this desire to control the destiny of  
6 the institution, if these facts aren't in conformity  
7 with the general present opinion. Obviously, of course,  
8 we're in very, very heavy research activity. More than  
9 other institutions.

10 THE CHAIRLADY: Our stenographer needs a  
11 two-minute break and perhaps other people do, as well.

12 (At this point there was a short recess.)

13 THE CHAIRLADY: All right, Dr. Kuhn.

14 DR. KUHN: The Chairlady said perhaps if I  
15 start talking, everybody might sit down.

16 MR. ENEY: Dr. Kuhn, I would like to ask you  
17 some questions in three areas, and these may be matters  
18 that you would prefer not to comment on now and include  
19 in the position paper which you referred to, which I  
20 hope will be very complete.

21 One of the things was a matter that you were



1 last speaking about, in response to Dr. Bard's questions.  
2 I take it that what you were talking about particularly  
3 is the power of the purchases, so to speak, and the con-  
4 trol over academic and administrative matters simply by  
5 controlling the money. We all have examples of that  
6 today, proliferating every day in the enormous control of  
7 the Federal Government over all activities of life simply  
8 by shutting off or turning on the flow of aid funds of  
9 various sort.

10 Do you think, from the point of view of the  
11 University of Maryland, that it would be desirable to  
12 include in the Constitution some provision under which  
13 the power of the purchases would be controlled so that  
14 the legislature in controlling appropriations or aid  
15 would not be able to indirectly thereby control other  
16 matters?

17 DR. KUHN: I would say, Mr. Eney, in all  
18 education, and it particularly applies in all higher  
19 education, there should be assurance that we can have  
20 complete freedom of speech in the final and academic  
21 freedom in the classroom, and if this can be written in





1 a way that it will cover all of the institutions of  
2 higher education, I think it would be a distinct advan-  
3 tage to these institutions.

4 MR. ENEY: I wasn't thinking solely of  
5 academic freedom, in the sense of freedom to speak your  
6 mind, but rather, of control of administrative matters,  
7 curriculum, in one sense; in other words, are you  
8 suggesting or do you suggest that the University of  
9 Maryland Board of Regents have a constitutional autonomy  
10 in all matters in the administration, going all the way  
11 from academic freedom to the tiniest of administration  
12 detail?

13 DR. KUHN: Yes, I am, in this sense, that no  
14 institution would ever want to be free of complete post-  
15 audits by State-appointed auditors and people of that  
16 type who completely delve into everything that has been  
17 done; but these should be post and not pre; and in pre-  
18 audit, you can control all aspects, pre-auditing of  
19 expenditures, pre-auditing of the hiring of people, pre-  
20 auditing of the individual salary. This is where there  
21 is real danger.



1           Now, the University of Maryland has under the  
2   Legislative Autonomy Act, I believe it was in 1953 when  
3   finally passed, has been able to have a considerable  
4   amount of autonomy of this type and this act is fairly  
5   broad along the lines that the authority of the Board  
6   of Regents shall not be superseded by any other board or  
7   commission of State government. Of course, the problem  
8   here is that that can be changed at any given session of the  
9   legislature and this makes much less permanence in the  
10   government of the Board.

11           MR. ENEY: Would you suggest, for example,  
12   that there be included in the Constitution provisions  
13   with respect to the budget of the University of Maryland  
14   similar to the provisions in the budget amendment with  
15   respect to public education?

16           DR. KUHN: I think the principle is the same,  
17   sir.

18           MR. ENEY: Would you extend this principle of  
19   limiting or cutting off the power of the purchaser's  
20   strings to institutions of higher education other than  
21   the University of Maryland?



1 DR. KUHN: I believe this particular item  
2 should be.

3 MR. ENEY: Would you, for instance, say that  
4 if the legislature wanted to give public moneys in aid  
5 of any institution of higher education, it could do so,  
6 but it could not impose any strings or conditions having  
7 to do with the administration of the institution?

8 DR. KUHN: Well, I would suggest in many  
9 respects that we have exactly this situation, which is  
10 what Maryland now does. It does give funds to private  
11 institutions of higher education. It has some strings.  
12 It may have some strings on individual students that may  
13 go into the institution having to teach, but on adminis-  
14 tration, I think this is the phase we're talking about.

15 MR. ENEY: Has the University of Maryland  
16 been plagued with attempted controls either by the  
17 executive or legislative department in this area, other  
18 than control of matters such as salary and the number of  
19 teachers and that sort of thing?

20 DR. KUHN: The University of Maryland could  
21 not have made the progress it has made in the last





1 twenty years, had it really be plagued by problems. I  
2 believe that the thing that we are talking about here is  
3 that when a board does not have firm authority on a  
4 reasonable continuing basis -- now, certainly, the  
5 Constitution could be changed by the voters; but where  
6 it can be changed in any given session of the legisla-  
7 ture, it has somewhat of a dampening effect on the extent  
8 to which it will move ahead in pursuing new knowledge  
9 and in fact pushing this knowledge so that people will  
10 fully understand it. I think that this is where we are  
11 really concerned.

12 I don't believe the university can say it has  
13 been plagued. I think perhaps, and I've not been in the  
14 central administration in the period prior to 1953, when  
15 the Autonomy Act went through; I think prior to that  
16 there were considerable problems in the minor acts of  
17 running a university. You don't approve a new position  
18 and therefore you can't get going on something. I have  
19 to say that since the Autonomy Act went through, there  
20 has not been too much, or certainly no major problems  
21 of this type.



1           MR. ENEY: Would you suggest that that con-  
2           stitutional autonomy be so extensive as to grant to the  
3           administration of the university or the regents the  
4           power to be as selective as they might at any time  
5           choose in the admission of students, or would the fact  
6           there is a University of Maryland make it necessary that  
7           the power be not quite that extensive?

8           DR. KUHN: Actually, the expectations of the  
9           people who have been elected in recent years in the  
10          legislature and the Governor and the people of Maryland  
11          have placed already by custom the authority to set the  
12          standards for admission of students and, while it has  
13          been certainly a matter of public concern and great  
14          debate, it has not been seriously questioned in recent  
15          years and I believe, actually -- Dr. Bard, you could  
16          speak on this from another point of view, but I believe  
17          this is an area that fortunately, by the opinion of  
18          enlightened people of all the citizenry has moved over  
19          to control the boards and I think this has happened.

20                 Now, the University of Maryland has not  
21          attempted to be terribly selective. I mean, move way up



1 on the ladder in this type of thing. We require today  
2 that a student have a C average and be recommended by  
3 his high school principal. We will perhaps be moving  
4 to the requirement in the next two or three years that  
5 they be up in the upper level of their graduating class.  
6 I would like to say, and I hate to disagree with Dr.  
7 Pullen, but I do personally have a different opinion  
8 about this matter of public free higher education and  
9 I would say this, along these lines.

10 There are today for any deserving student who  
11 can qualify for admission adequate loan funds at reason-  
12 able interest rates to meet his college expenses. There  
13 are many scholarships for the really deprived, economi-  
14 cally deprived student. There is the opportunity under  
15 one of the programs in the Office of Economic Opportunity  
16 for students to work to earn their needs for college, if  
17 they are really in a deprived situation from the stand-  
18 point of economics. In many respects, it seems to me  
19 that the only students today who are qualified and who  
20 do not move forward into higher education are those in  
21 which, where we have failed, I think, to get out and help





1 families and parents to understand the importance of  
2 this and to somehow get them to come in and to apply  
3 to one or more of your institutions; and I believe that  
4 the investments of time and effort in working or borrow-  
5 ing funds and repaying them is not too much to ask of  
6 the student for higher education.

7 I don't believe in the very selective public  
8 system in which you get your admission way up here and  
9 you simply serve a few that you would like.

10 MR. ENEY: Let me ask you in one other area,  
11 if I may, and this is apart from the University of  
12 Maryland. I think the present Constitution deals almost  
13 entirely with public education with perhaps one excep-  
14 tion. It doesn't have any provisions encouraging private  
15 education.

16 Do you think that it would be desirable,  
17 particularly in the area of higher education, to have  
18 either, one, constitutional encouragement of independent  
19 colleges in private education or, two, more specific  
20 constitutional assistance by means of tax exemption or  
21 something of that sort?



1 DR. KUHN: You are getting into a pretty deep  
2 subject here, Mr. Eney.

3 MR. ENEY: I indicated earlier that these are  
4 things you might not want to comment upon now and might  
5 later.

6 DR. KUHN: May I be facetious and say one of  
7 my constituents in the University of Wisconsin used to  
8 say, that is a pretty good question. Who has another  
9 one?

10 I think, seriously, those who have been  
11 enmeshed in attempting to meet the tremendous increase  
12 in needs in public higher education have been at times  
13 somewhat concerned when the State does use its tax funds  
14 to support private institutions and then does not give  
15 the public institutions anything like the freedom to do  
16 the job with the money that it does the private insti-  
17 tutions. I think maybe this is simply administration  
18 talking, but it's a very unfair kind of, shall I say  
19 competition.

20 There is something to be gained in public  
21 higher education to have private institutions that are



1 completely free of having to depend on direct tax dollars  
2 from the state or from the nation. Now, there are very  
3 few institutions in that fortunate position any more,  
4 with the tremendous Federal funds going into research  
5 and to support of higher education, but one of the long-  
6 time characteristic marks have defined private institu-  
7 tions is that they have been completely free in way out  
8 approaches and research activities, without the fear of  
9 their money being curtailed because it is in fact coming  
10 from the students in tuition and from the endowments that  
11 have been given by individuals and invested income for  
12 the institution.

13 I am not sure that if we made more than a  
14 token provision of State funds for this purpose, that  
15 we might injure some of the better institutions.

16 THE CHAIRLADY: Dr. Kuhn, as I understand it,  
17 the regents would propose that the present legislative  
18 autonomy be made constitutional for the University of  
19 Maryland.

20 DR. KUHN: That is pretty largely what I  
21 understand.





1 THE CHAIRLADY: And there would be a particu-  
2 lar section of the Constitution devoted to that question?

3 DR. KUHN: Or as an article under the educa-  
4 tion area. I don't know.

5 THE CHAIRLADY: But this would be restricted  
6 to the University of Maryland and would not involve the  
7 boards or the running of other public institutions of  
8 higher learning in the State?

9 DR. KUHN: I certainly would not talk against  
10 it involving the others. I would have to say again the  
11 university is in a particularly vulnerable position  
12 here in the sense that it must do so much research and  
13 have so many responsibilities and, in short, disseminates  
14 this knowledge and it is in this area of a new approach,  
15 of new facts, that you most often run into very trying  
16 relationships, shall we say, with the public.

17 THE CHAIRLADY: You mentioned the Michigan  
18 Constitution. We happened to have copies of the educa-  
19 tion provisions here and they proceed through the better  
20 part of three and a half pages of small print, letter  
21 size, and they deal with all the various institutions in



1 great detail.

2 DR. KUHN: I'm afraid even the University of  
3 California has three pages.

4 THE CHAIRLADY: As I know you are aware, we  
5 are quite anxious to produce a document which is terse  
6 and covers only the most basic --

7 DR. KUHN: I think the courts in their examina-  
8 tion of these constitutional provisions for universities,  
9 public universities, have tended to single out very short  
10 passages in this total. For example, in the University  
11 of California item, just the first three lines have  
12 really been singled out as a basis for the university  
13 to move ahead and not all the rest of it. It has no  
14 particular importance in context.

15 THE CHAIRLADY: Would the university have been  
16 precluded from moving ahead without such provision in  
17 the California Constitution?

18 DR. KUHN: I don't think anybody could say  
19 whether it would or would not. You can say, I think,  
20 regardless of the student incident that may not in the  
21 long run be a benefit to the nation at all, but the real



1 black eye of the University of California in Berkeley  
2 last year -- but there has been no institution in this  
3 country that has made the progress, that had made the  
4 contribution to our defense during the war years, that  
5 has more Nobel Prize winners, than the University of  
6 California. This is not just autonomy. This is govern-  
7 mental support of higher education.

8 MRS. FREEDLANDER: I'm a member of the  
9 Declaration of Rights Committee and would like to take  
10 advantage of your being here to ask a question. Although  
11 you indicated that academic freedom has a self-policing  
12 aspect because of the accreditation of institutions,  
13 would you conceive of having such a provision in the  
14 Declaration of Rights to protect all institutions,  
15 including public schools and the like, because every  
16 once in a while righteous groups get up their dander and  
17 say what books should be used in schools and what  
18 teachers should or should not teach?

19 Do you believe that there is a place in the  
20 Declaration of Rights for a general provision on academic  
21 freedom?





1 DR. KUHN: I'm a little confused at this  
2 point and, like Dr. Pullen, with a gentleman like Mr.  
3 Eney around, I'm not going to pose as a lawyer, but I  
4 wonder if this isn't basically talking about free speech?  
5 Doesn't this cover it in the broader sense, whether it's  
6 in the --

7 MRS. FREEDLANDER: We generally think of the  
8 Bill of Rights as protecting an individual.

9 DR. KUHN: I see what you mean; an institution  
10 versus an individual.

11 MRS. FREEDLANDER: Or the government, as far  
12 as the United States Bill of Rights protects you against  
13 government interference.

14 DR. KUHN: I can only say this. Anything of  
15 this type which tends to insure the continuing freedom  
16 of the institution would be helpful. It's been amazing  
17 to me living in the midst of -- my work has often been  
18 with the physical and fiscal aspects of the growth of  
19 the university. This is where you attempt to get con-  
20 trol. Seldom any more will there be a real assault on  
21 academic freedom and, if it comes, you can usually get



1 it properly looked at and it is not really, you know,  
2 where the institution is controlled.

3 The University of North Carolina is one of  
4 the only recent ones I have seen where there was a  
5 tendency of taking the matter of free speech, bringing  
6 speakers in and starting to control the university, but  
7 it successfully worked out of this in a short while this  
8 past year. It would be wonderful to have it, whether  
9 the whole attitude of the people of this State is such  
10 that it is not needed. This would be a question you  
11 might want to look at.

12 MRS. FREEDLANDER: Thank you.

13 THE CHAIRLADY: I would like, if we may, to  
14 get down to some more pedestrian and less idealistic  
15 concerns and call on Dr. Zimmerman at this point who is,  
16 I understand, an expert on the practical workings of  
17 Section 52, the budget provisions regarding the inviolacy  
18 of the school funds, because our Committee is somewhat  
19 confused as to how it actually works; not whether it is  
20 desirable or not as an abstract proposition, but exactly  
21 what it accomplishes and what would happen if we saw fit



1 to recommend its removal, what difference it might make  
2 on a practical basis, and I think we would very much  
3 appreciate, Dr. Zimmerman, if you would give us a down  
4 to earth explanation of it in practice.

5 DR. DAVID W. ZIMMERMAN: Madam Chairlady,  
6 members of the Committee, you put me on as an expert and  
7 you almost disqualify me, because I am not an expert. I  
8 have been working in the State Department of Education  
9 since 1942, and spent quite a spell in working with  
10 finance.

11 At the outset, I would like to say that I  
12 subscribe to the position of the Committee on keeping the  
13 Constitution brief, terse and to the point and not get-  
14 ting it fouled up with a lot of minutia which rightfully  
15 belongs in the law. I think constitutions are supposed  
16 to set the basic framework for the establishment of  
17 government, protection of rights and safeguards, and  
18 commit the other things to be in the statutes.

19 Just a footnote to what Dr. Pullen was saying  
20 about the tendency toward one-man government. We have  
21 experienced this kind of problem through the years.





1 We want to initiate new programs and budget people say  
2 to us, but you shouldn't initiate this program unless  
3 you can sell it to us and find out whether or not we  
4 agree with you. Now, that is usurping the policy-making  
5 power of the State Board and the State Superintendent,  
6 when the budget people take that kind of a position.  
7 In other words, they will not include it, not always,  
8 but frequently, and this varies with the people with  
9 whom you work, different budget people might react  
10 differently. In other words, you have to seek their  
11 approval first before you include it.

12 He didn't mention it, but I mention that  
13 because I've been on the receiving end of that kind of  
14 thing. Now, I am not suggesting that you can put a  
15 provision in the Constitution to keep the budget people  
16 from doing this. I just give you this for further infor-  
17 mation.

18 I think, so far as public education is con-  
19 cerned, the Constitution ought to contain the following  
20 things that ought to provide for the establishment of a  
21 system of free public schools or free public education,



1       whichever you choose to call it. It ought to provide  
2       for the establishment of a State education agency. The  
3       existing Constitution makes no mention of a State educa-  
4       tion agency. The one in 1864 did, but this does not.

5               It ought to provide for the support of the  
6       public school system by the General Assembly through  
7       taxation, which this one does. Then it ought to provide  
8       the adequate safeguards for the administration of a  
9       system of free public schools. Fortunately, I've been  
10      a member of the National Committee, the Study Commission  
11      of the chief State school officers for more than fifteen  
12      years and one of the things we have concerned ourselves  
13      with is the State Department of Education, and about ten  
14      years ago we prepared a little bulletin called the State  
15      Department of Education, which was revised in 1963, and  
16      that bulletin sets forth the following as to the con-  
17      stitutional provisions for education.

18             It says the State Constitution should contain  
19      the basic provisions for the establishment of a central  
20      education agency and should empower and direct the  
21      legislature to formulate a general plan for placing



1 these provisions in effect. The Constitution should  
2 provide for the establishment of a nonpartisan lay  
3 State Board of Education to head the central education  
4 agency. This board should be empowered to, one, appoint  
5 the chief State school officer, two, exercise general  
6 supervision of the education in the State, three,  
7 coordinate educational activity in the State, four,  
8 formulate general education policies, rules and regula-  
9 tions within the framework of the statutes of the State.

10 Also the Constitution should provide that the  
11 chief State school officer be designated as, one, execu-  
12 tive officer of the State Board, administrative head of  
13 the State Department of Education, administrative officer  
14 of the State for executing the laws, rules and regula-  
15 tions relating to education which arise under the State  
16 Constitution, State statutes or policies of the State  
17 Board of Education.

18 Now, I don't subscribe to each of those as I  
19 read them, but I have prepared a section for making the  
20 State Board a part of the Constitution and I have copies  
21 for you. If you want me to read them, I would suggest





1 the following.

2 The General Assembly by law -- I beg your  
3 pardon, that's another section. There shall be a non-  
4 partisan lay State Board of Education appointed by the  
5 Governor for overlapping terms which Board shall be em-  
6 powered to appoint the State Superintendent of Schools,  
7 exercise general supervision of education in the State,  
8 formulate general educational policy, rules and regulations  
9 within the framework of the statutes of the State and  
10 perform such other duties as the General Assembly may  
11 direct.

12 Then another section:

13 There shall be a State superintendent of  
14 schools who shall be the executive officer of the State  
15 Board of Education and the chief administrative officer  
16 of the State for executing the laws, rules and regula-  
17 tions relating to education which apply under the State  
18 Constitution to the policy of the State Board of Education.

19 I feel strongly that the State Board of Educa-  
20 tion, Department of Education and State Board of Super-  
21 intendents are so important that they should be mentioned



1 in the Constitution, as they were in 1864. I think all  
2 of you realize the power of the Constitution, as to  
3 changing it later, because there was a real revolution  
4 in the General Assembly and they overturned the whole  
5 1864 Constitution and they were so disturbed by the  
6 first State Superintendent, that they wanted to remove  
7 all vestiges of what he had initially tried to do.

8 I think Section 1, which has to do with the  
9 establishment of a system of free public schools, should  
10 contain some section which would read as follows:

11 Which will provide equal educational oppor-  
12 tunies for all children.

13 We hear so much these days about discrimina-  
14 tion and lack of equal opportunity, so I would suggest  
15 that we need to include in that section some reference  
16 to equal educational opportunities. Dr. Paquin made  
17 reference to thorough and efficient. He wasn't happy  
18 with it.

19 I don't have anything better to suggest,  
20 because people these days do make reference to quality  
21 education and, if you just say education, maybe that is



1 all the Constitution should say, but I'm not suggesting  
2 that you take out the words thorough and efficient. I  
3 noted from Dr. Bard's model of the Constitution wording  
4 that might perhaps be better.

5 Now, you asked me to comment about the safe-  
6 guards which have to do with keeping the public school  
7 funds inviolate. I think Dr. Pullen has given you good  
8 examples as to why that should be kept that way, so that  
9 the budget could not be amended and amended away from  
10 the public school funds which rightfully belong to the  
11 schools.

12 Now, I think this should be said. This sec-  
13 tion applies to the mandated sections of the law, sections  
14 which are mandated by law. This doesn't protect the  
15 funds of the State Department of Education. They can  
16 be reduced by the legislature. It protects the mandated  
17 sections which require, for instance, salaries for  
18 teachers and the other things which must be paid to run  
19 a school system.

20 I think this is the section which we should  
21 not permit to be -- I would suggest that we do not change





1 it because, as Dr. Pullen pointed out, not in recent  
2 times, but in times past the State school funds in other  
3 states where they didn't have this constitutional pro-  
4 tection have been diverted to other uses. It's easy to  
5 get money for public schools and appropriations. You get  
6 a big appropriation and then if you proceed to divert it  
7 or amend the budget to transfer it, and the legislature  
8 can do this, this is not good; and you may say, well,  
9 why protect the public schools?

10 Well, I think that the point here is if the  
11 legislature appropriates funds for the operation and  
12 maintenance of public schools, we should make sure that  
13 those funds are used for that purpose and, if there is  
14 a surplus, it ought to revert to the State. It ought  
15 not to be diverted.

16 We do have surpluses each year because, as  
17 Dr. Pullen pointed out, we cannot estimate accurately  
18 what it is going to cost to operate the public schools  
19 throughout the State, as far as State aid is concerned.  
20 Sometimes we have a million dollars surplus, sometimes  
21 two, but that goes back to the State. We only spend for



1 the operation of schools those State moneys which are  
2 permitted by law.

3 Fortunately, during my twenty-two years in the  
4 State Department of Education, we have not had the prob-  
5 lem of an attempt to divert those funds. There has been  
6 more criticism in the legislature about the mandated  
7 sections which they cannot reduce. As you will recall,  
8 the budget estimates which are prepared by the State  
9 Superintendent of Schools may not be even reduced by the  
10 Governor. He receives them and passes them onto the  
11 legislature.

12 I think this is a good section because the  
13 counties must pay certain minimum salaries for a desig-  
14 nated number of teachers, which the law requires or per-  
15 mits them to employ, under a more recent law, and to  
16 support transportation. These are things which the  
17 law sets forth as the minimum program of education and,  
18 if we have a minimum program of education, the State  
19 should support it and not permit the legislature to  
20 reduce this amount which would place the local political  
21 subdivision then in a position of not being able to pay



1 the salaries provided by law or to transport the children  
2 as required by law, and I think that is why we have man-  
3 dated section.

4 Legislators quarrel about this, but I think  
5 in the final analysis, they understand it, but it is  
6 just the fact that the bulk of our budget cannot be  
7 reduced by the General Assembly. It comes down to, in  
8 the final analysis, what can they reduce?

9 They can reduce the headquarters, the office  
10 of the State Superintendent of Schools, and that is a  
11 small way, but they don't get to the millions of dollars  
12 which goes to the support of the operation of the  
13 schools out in the counties and in Baltimore City.

14 THE CHAIRLADY: The budget, though, as pre-  
15 sented to the legislature and unalterable by the Governor  
16 is one which is prepared by the budget director and not  
17 by the school -- and is not the School Superintendent's  
18 sole right or responsibility to present.

19 DR. ZIMMERMAN: Well, we prepare the estimates  
20 for minimum salaries, the other costs and transportation.  
21 We submit them to the budget director and he in turn





1 passes them on to the Governor, but the budget director  
2 may not reduce them for the Governor. He has to take our  
3 estimates on these mandated items. The budget director  
4 may reduce headquarters, the operation of the State  
5 Department, but not those mandated items.

6 THE CHAIRLADY: If you demanded, though, the  
7 entire funds of the State of Maryland for the public  
8 schools, there is nothing anyone can do about it?

9 MR. ENEY: No.

10 DR. ZIMMERMAN: I'm not saying that --

11 MR. ENEY: You're talking about the equaliza-  
12 tion fund.

13 DR. ZIMMERMAN: That's right, and the ones  
14 mandated --

15 MR. ENEY: Which are fixed by law.

16 DR. ZIMMERMAN: Fixed by law. He can reduce  
17 the ones not fixed by law, the so-called non-mandated  
18 items.

19 MR. ENEY: Essentially, isn't what you call  
20 the mandated funds the equalization --

21 DR. ZIMMERMAN: Yes, that's right. It does



1 not include such things as, well, the State Department  
2 itself, and it does not include library. However, now,  
3 they have been declared to be a mandated part because it  
4 provides for the minimum support of libraries of \$1.20  
5 per capita for public libraries.

6 THE CHAIRLADY: Of course, the legislature can  
7 change the amounts?

8 DR. ZIMMERMAN: Oh, yes. Anything that the  
9 legislature gives, the legislature can take away. In  
10 other words, all this does is mandate the payment of  
11 State moneys for those items which the legislature has  
12 seen fit to legislate as requirements.

13 THE CHAIRLADY: So, if they wanted to get  
14 around you through the back door, they would have to  
15 change the appropriated amount?

16 DR. ZIMMERMAN: They would have to change the  
17 basic law.

18 DR. BARD: May I give an illustration of that  
19 to support Dr. Zimmerman's concept here, as it applies  
20 to the community college, for example. The State law  
21 has made it clear that there will be State matching funds



1 in terms of current operating expenditures from one-third  
2 up to a maximum.

3 Now, if the legislature were to in any sense  
4 destroy this concept, the community college, such as  
5 ours, couldn't possibly set forth its budget upon which  
6 we draw student tuitions and local funds, so that they  
7 are integrated to fulfill our purpose and therefore this  
8 is inviolate. There is no possible way that we could  
9 operate with security. This is one illustration of  
10 the very thing that Dr. Zimmerman is talking about.

11 MR. ENEY: But, so far as the State Department  
12 of Education budget is concerned, the equalization of  
13 fund payments, the related mandated fund payments are  
14 almost the entire budget, aren't they?

15 DR. ZIMMERMAN: Except for State headquarters.

16 MR. ENEY: Well, in dollars or percentage,  
17 what is it, 97 per cent?

18 DR. ZIMMERMAN: I don't know the per cent,  
19 but it is great.

20 MR. BROOKS: Over 90, certainly.

21 MISS BESSIE C. STERN: There are other items





1 other than payment of salaries.

2 DR. ZIMMERMAN: That's in the Cooper Revision.  
3 It's a part of the over-all personnel.

4 DR. BARD: Mr. Eney, if you substitute for  
5 equalization State aid laws --

6 MR. ENEY: I'm old-fashioned, using the old  
7 terms.

8 DR. BARD: Then it goes beyond. It would  
9 embrace the illustration I gave and others. Then you  
10 would by all means be active in --

11 DR. ZIMMERMAN: Now, we have equalization and  
12 incentive on top of that. They will support 45 pro-  
13 fessional employees per thousand students. Then from  
14 45 to 50, they will offer incentive aid by giving you  
15 that percentage of State aid which you got for the basic  
16 part. In other words, if the State was putting up 30  
17 per cent of the cost of the basic program of 45 per  
18 thousand, they would support 30 per cent of the 45 to  
19 50; but if you employ more than 50 per thousand, then  
20 you are on your own.

21 We also have incentive funds for school



1 buildings. Those are the items, and the aid for handi-  
2 capped children, \$600 per child, for handicapped children  
3 is a mandated item likewise.

4 MR. ENEY: Is it necessary to protect this  
5 any further by constitutional provision than it is  
6 already protected?

7 DR. ZIMMERMAN: In the Constitution?

8 MR. ENEY: Yes.

9 DR. ZIMMERMAN: I think this is good. I would  
10 suggest that not be changed.

11 MR. ENEY: It is not necessary that there be  
12 anything added to it?

13 DR. ZIMMERMAN: No, I don't think so. It has  
14 worked through the years and it states very clearly and  
15 concisely what we mean.

16 MR. BROOKS: Dr. Zimmerman, I would like to  
17 differentiate for a minute between the provisions of  
18 Article 3 of the budget, to which I think you have been  
19 addressing yourself, and the third section of Article 8,  
20 which speaks about keeping the educational funds inviolate.

21 As I understand it, actually today all the



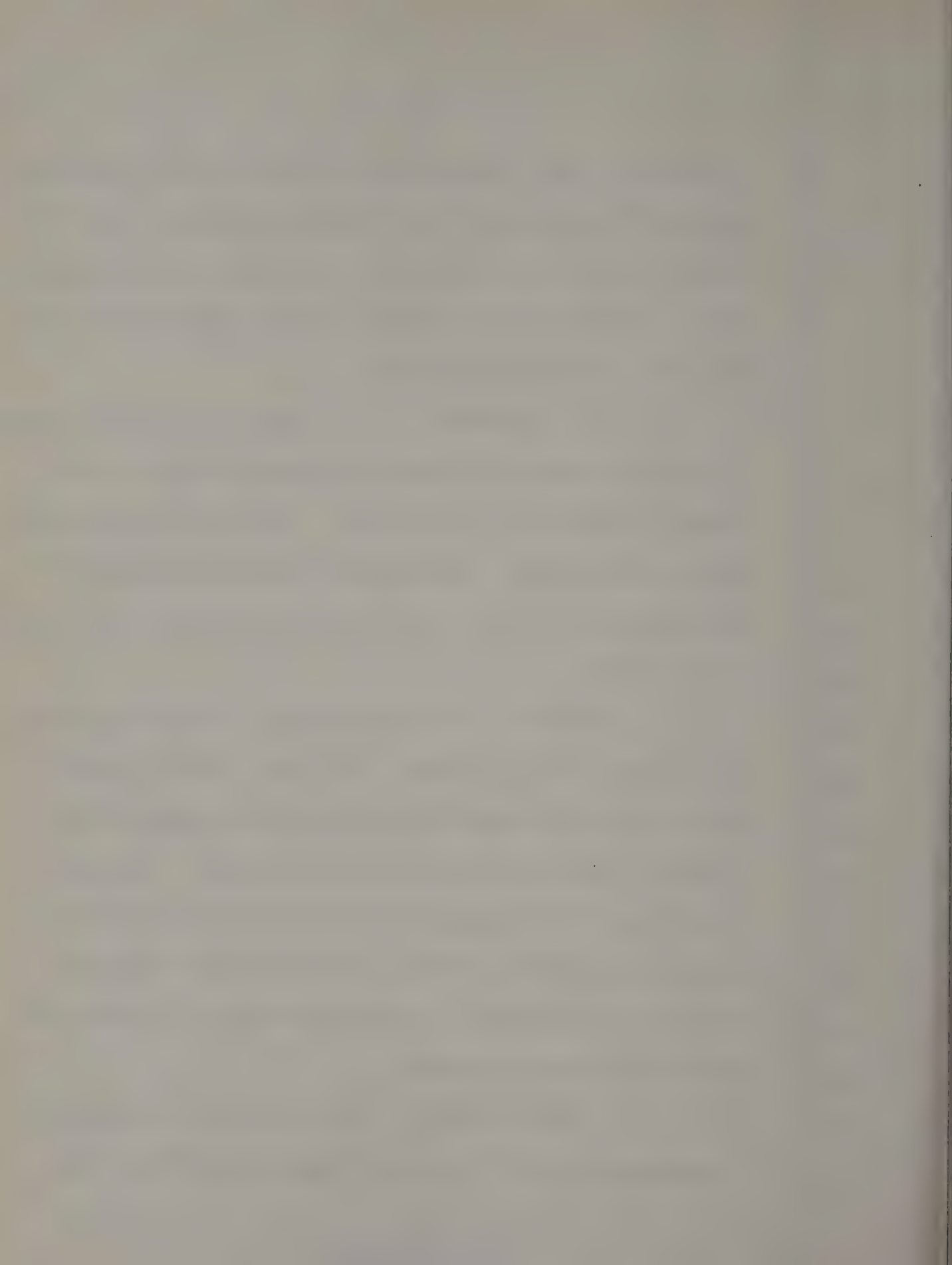
1 educational funds come from the general funds and that  
2 perhaps that Article 3 isn't really applicable and  
3 doesn't contribute anything to the process of protection  
4 that the budgetary provisions now set forth and to which  
5 you were addressing yourself.

6 DR. ZIMMERMAN: No, I think they are different.  
7 I think one has to do with the process of getting the  
8 moneys through the legislature. That is the one we have  
9 been talking about, the mandated items as they move  
10 through the Governor's office and on into the legislature,  
11 that process.

12 This one talks about after the appropriation  
13 is made by the legislature. You see, you can transfer  
14 moneys after the legislature adjourns by budget amend-  
15 ment and this is what we're talking about. After the  
16 legislature has appropriated X millions of dollars for  
17 the public schools, we want to be sure that those X  
18 millions of dollars go for public education and are not  
19 amended for other purposes.

20 THE CHAIRLADY: Just a point of information.  
21 I wondered what was involved in diverting funds after





1 they had been appropriated from one State use to another?  
2 What would have to happen to amend the budget?

3 DR. ZIMMERMAN: Proof of the departments --

4 MR. ENEY: Within the limitation.

5 DR. ZIMMERMAN: Within the limitation of the  
6 budget.

7 MR. BROOKS: In this State, and there are  
8 some others, are they generally addressed to specific  
9 educational funds that are set up, say in regard to  
10 revenue amounts, that are set apart when they come in as  
11 educational funds?

12 DR. ZIMMERMAN: That is the section of this  
13 language, because originally we had a State tax for  
14 schools and this is called the State School Fund.

15 MR. ENEY: That is Mr. Brooks' question. He  
16 is saying that since we no longer have a school fund,  
17 is it important to retain this Section 3 of Article 8,  
18 the protection for the school fund?

19 DR. ZIMMERMAN: Yes, I think so, because the  
20 State School Fund was the only source of funds for the  
21 State-supported schools originally and now the general



1 funds appropriation is in fact the State School Fund.  
2 Rather than have just a source that you can only spend,  
3 and no more, now you have an appropriation.

4 MR. ENEY: There are still some funds that  
5 are earmarked, that become school funds. Escheat moneys  
6 come to my mind, as an example.

7 THE CHAIRLADY: I was so advised that those  
8 were the only moneys so earmarked.

9 DR. ZIMMERMAN: Practically all the moneys  
10 come from our school fund.

11 MISS STERN: The local communities get that.  
12 I don't know whether the State gets that. Certainly,  
13 Baltimore City gets that.

14 DR. ZIMMERMAN: I think that goes to the  
15 local school boards.

16 THE CHAIRLADY: That doesn't amount to very  
17 much, though.

18 MR. BROOKS: Mrs. Perkins wasn't sure there  
19 was anything specifically designated to the educational  
20 fund any longer.

21 DR. ZIMMERMAN: There is no earmarked fund,



1 except appropriations, that's correct.

2 MR. BROOKS: Would this provision in the  
3 Constitution really afford protection from the shifting  
4 of funds generally appropriated for education?

5 DR. ZIMMERMAN: If the present Constitution  
6 doesn't protect the funds appropriated for the State  
7 Education Department, then it ought to be.

8 MR. BROOKS: There has never been any test,  
9 as far as you know, to see whether that really applies?

10 DR. ZIMMERMAN: No. It has been referred to  
11 from time to time.

12 MR. BROOKS: If that were done, it would also  
13 be necessary to have it in the budgetary provisions,  
14 rather than as it is now, in Article 8.

15 DR. ZIMMERMAN: I'll let Mr. Eney answer that.  
16 He's the lawyer.

17 MR. BROOKS: I wondered if you had any thought  
18 about it?

19 DR. ZIMMERMAN: We want to be sure it stands  
20 out and gives us the protection we are guaranteed. I  
21 think this is important because the money needs to be





1 there for the local school systems. We can't afford to  
2 place them in jeopardy of not having the funds which were  
3 appropriated by the State for them.

4 THE CHAIRLADY: You say in your experience,  
5 as a practical matter, there has actually been no invasion?

6 DR. ZIMMERMAN: That's correct, we've had no  
7 invasion.

8 THE CHAIRLADY: A number of other states seem  
9 to have provisions similar to the current provisions in  
10 the Maryland Constitution. Do you know of any modern  
11 incidents in any other states where this --

12 DR. ZIMMERMAN: We did have an attempt to  
13 take out the section which has to do with the protection  
14 of the mandated items, some fifteen or eighteen years  
15 ago. There was a bill introduced --

16 MR. ENEY: To take it out of the budget.

17 DR. ZIMMERMAN: Yes, there was an attempt to  
18 take it out, so that the mandated items would not then  
19 have been free from decrease and, of course, this died  
20 very fast, before it got started.

21 I think we can say through the years



1 enlightened governors, school people and the members of  
2 the legislature have realized that the best politics is  
3 not to tamper with the school funds which are needed to  
4 operate the schools, and I think the fact that this has  
5 been in here has served as a warning to people not to do  
6 the kind of things we are talking about. I know during  
7 my tenure we've had good relationships, as far as the  
8 State mandated items are concerned.

9 MR. ENEY: Dr. Zimmerman, could I ask you to  
10 comment on a matter I asked Dr. Pullen to comment on?  
11 There have been suggestions that various independent  
12 boards should be made advisory only and that the head  
13 of an agency, executive head of the agency supervised  
14 by the board responsible directly to the Governor.  
15 Would you comment as to whether that would be desirable  
16 or undesirable with respect to education?

17 DR. ZIMMERMAN: Well, the fact that I am  
18 recommending that the State Board of Education and the  
19 State Superintendent be included in the Constitution  
20 gives you my position. I would strongly oppose it.

21 MR. ENEY: It could be excluded, but it would



1 be an advisory board.

2 DR. ZIMMERMAN: Well, I think we need a board  
3 to make policies. I think that is the purpose of a  
4 board, not as advisor to the State. I don't think we  
5 want to make the State Superintendent a power unto him-  
6 self. He needs the board to make policies for him.  
7 The State Superintendent has no right to make policy.  
8 He makes a recommendation after a study to the board  
9 and then the State Board makes policy.

10 I think this is the way it should be. There  
11 should be a delicate balance between the executive who  
12 is the State Superintendent and the State Board which  
13 in effect is the legislative arm of the State school  
14 system. No, I don't think that would be good, because  
15 I think we need lay policy-making boards to help us make  
16 policy. There is always the danger, when you place too  
17 much power in the hands of one person -- and this is no  
18 reflection on Dr. Pullen or anyone.

19 MR. ENEY: Would you limit the State con-  
20 stitutional provision to the State Board or would you  
21 think it would be desirable that there be a State





1 Constitution for county boards as well?

2 DR. ZIMMERMAN: No, I think that should be a  
3 constitutional provision. I think they have that.

4 DR. BARD: May I comment? It is getting to  
5 be common practice that county charters be clear on this  
6 question just as city charters. So, the question of  
7 local legislation would be embodied within the charters  
8 of local units. It's in Baltimore City's Charter, for  
9 example.

10 DR. ZIMMERMAN: Maybe Mr. Eney has a point  
11 that has escaped me. I think we've got to be careful  
12 that local boards of education don't just become another  
13 department of local government and under control of local  
14 county managers or whoever they may be. I think we have  
15 to protect here again the local school boards, to be sure  
16 that they can operate under the rules and regulations of  
17 the statutes of the State and the rules and bylaws and  
18 the policies of the State Board of Education. Maybe Mr.  
19 Sartorius who was formerly in the State Department of  
20 Education and is now the Superintendent of Baltimore  
21 County, perhaps he may be able to answer that.



1 THE CHAIRLADY: Dr. Zimmerman, the tendency  
2 has been that this Committee has had thrown at it various  
3 constitutional provisions such as State librarian as a  
4 constitutional office and adjutant general as a con-  
5 stitutional office. We made some recommendations already  
6 in these areas and will probably make others which will  
7 tend to eliminate the number of constitutional offices  
8 rather than add to the present number.

9 Do you really feel as a practical working  
10 matter that it is necessary to give constitutional  
11 status to the Board of Education and the Superintendent?

12 DR. ZIMMERMAN: Yes, I do. I think you run  
13 the risk of having the Board maybe eliminated by statute  
14 and then an elected Superintendent and he becomes a  
15 politician, and in some states the State Superintendent  
16 is no sooner in office than he is a candidate for  
17 governor, and I think this is the worst kind of State  
18 Superintendent we want.

19 I think we want a career man who is not a  
20 politician, and that is why I feel very strongly that  
21 he should be a constitutional officer appointed by a



1 board and not elected by the public.

2 THE CHAIRLADY: You know, a number of con-  
3 stitutions call for election of the Board and the Super-  
4 intendent?

5 DR. ZIMMERMAN: I know that.

6 THE CHAIRLADY: As a constitutional measure  
7 to do exactly what you feel --

8 DR. ZIMMERMAN: There is a trend across the  
9 country to appoint the State Superintendents rather than  
10 elect them. When I first went with the State Department  
11 of Education, the number of appointed superintendents  
12 were eight or ten. Now, more than half of them are  
13 appointed rather than elected and I think, without  
14 casting any reflection on any State Superintendent, the  
15 ones who are appointed become more professional and  
16 spend their time on the professional job of the school  
17 system of the state rather than to aspirations for the  
18 next higher office.

19 THE CHAIRLADY: I don't think we have any  
20 intention of recommending the election of an officer.

21 DR. ZIMMERMAN: Where there is a constitution,





1 we have protection. This is what the Constitution is  
2 for, to guarantee certain things, protect the things  
3 that we ought to have, so far as the establishment of  
4 the government, the school government, if you please.  
5 This group I have worked with for fifteen years feels  
6 very strongly that this is a must. We want to preserve  
7 the independence of the public schools and the freedom  
8 from the kind of interference we've been talking about.

9 THE CHAIRLADY: Thank you very much. Mr.  
10 Sartorius, did you want to make a comment?

11 MR. WILLIAM S. SARTORIUS: I'd like to comment  
12 on a question Mr. Eney raised and that is about the  
13 local boards of education. I think it is rather advis-  
14 able to consider that, including local boards of education,  
15 also. We operate in Baltimore County under a County  
16 Charter, of course, a charter form of government locally,  
17 but that Charter spells out the Board of Education as a  
18 department and speaks in terms of it as being a depart-  
19 ment, and we are running into problems all the time as  
20 to whether or not the Charter takes precedence over the  
21 State school laws, Article 77. In come cases, it is



1 in conflict and we have never -- I mean, we claim that  
2 we do not consider that we are a department of the County  
3 government, that education is a State function and we  
4 have certain power delegated to us by the State and we  
5 operate under Article 77, and so forth, and not under  
6 the County Charter, as such.

7 So, I think it would be very helpful, I know  
8 to us, and Dr. Bard said that in Baltimore City it is  
9 spelled out in their Charter that they are independent  
10 and have a certain amount of --

11 MR. ENEY: But the appointment of the Balti-  
12 more County Board is still by the statute, Article 77,  
13 rather than by the Charter; is that right?

14 MR. SARTORIUS: That's right.

15 THE CHAIRLADY: Do you feel there should be  
16 a constitutional provision regarding the appointment of  
17 a County Board?

18 MR. SARTORIUS: Not the appointment of the  
19 County Board, but spelling them out like you do the  
20 State Department of Education, that they formulate  
21 policy and operate the school system. Not the appointment;



1 I'm not talking about that.

2 THE CHAIRLADY: But it should be constitu-  
3 tionally existed, the County Board?

4 MR. SARTORIUS: I think it would be helpful.  
5 I don't know whether it belongs there. It would have to  
6 be on the Committee to decide that, but I think it would  
7 be helpful.

8 MR. ENEY: Either that or it be provided by  
9 general law and not by local law?

10 MR. SARTORIUS: That's right. Probably that  
11 would be a better place rather than an actual statement  
12 in the Constitution.

13 THE CHAIRLADY: Would you like to make any  
14 additional comments?

15 MR. SARTORIUS: I would like to amend what  
16 my colleague just said. I am going to say that I am  
17 anxious to see, and I think all superintendents will  
18 subscribe to this, to see all provisions kept as broad  
19 as possible, in order that we can provide for changes  
20 and not have to go back and have a constitutional amend-  
21 ment every time conditions change, and to make it broad





1 in nature and terse, as you have described.

2 We want to subscribe to Article 3, support it  
3 100 per cent, in that money appropriated for schools not  
4 be diverted. Certainly, we want to keep that inviolate.  
5 There is a tendency, and I'm not going to burden you with  
6 examples, but there are occasions on a local level, and  
7 I realize this involves State funds, but it is hard for  
8 us to distinguish between State funds and local funds  
9 when we get our money to support our budget from State  
10 money and therefore it is pretty hard -- we don't keep  
11 State funds as a separate account. It goes into our  
12 support of general educational funds. So, we would like  
13 to see that kept inviolate.

14 Certainly, we want to support Article 3,  
15 Section 52, and the various subsections pointed out. You  
16 can have a law -- we are operating where most of our  
17 funds come to us as a guaranteed \$98 per pupil State  
18 support. You can have that as a law and the legislature  
19 passes it, but if our estimates, which are reviewed and  
20 supported by the State budget that goes to Annapolis,  
21 if the budget director or the Governor or somebody else



1        says, well, we'll just cut so many million dollars out  
2        of that per pupil allotment or State aid, even though  
3        the law says that we are going to be guaranteed this,  
4        when it comes to be paid, if the funds are not there,  
5        we are hurt. We can't carry out our local rights be-  
6        cause we have submitted budgets locally with the State  
7        support that is guaranteed by law. So, certainly it  
8        has got to be kept in, so the budget people or the  
9        legislature cannot just arbitrarily cut money that  
10       would support the provisions of the finance laws that  
11       are there. That's about all I have to say.

12                THE CHAIRLADY: I would like to ask you at  
13       least one question, which you may not want to answer.  
14       I would regard it perhaps as a hot question, but coming  
15       from the county superintendents group, there are a num-  
16       ber of state constitutions which make specific provision  
17       or prohibition against the use of state funds either  
18       directly or indirectly in support of secular schools,  
19       either stating explicitly that they cannot be used for  
20       transportation and stating explicitly they cannot be  
21       used for any purpose. I know this has been an issue in



1 a number of counties, and I wonder if you have any com-  
2 ment on whether there should be any provision in the  
3 Constitution?

4 MR. SARTORIUS: Well, you know there was a  
5 bill passed in Baltimore County and it went to referendum  
6 and the people spoke. They did not want their money to  
7 go for non-public transportation. They have already  
8 spoken on that. So, it is the will of the people in our  
9 county. At least, that was true two years ago when the  
10 referendum went for a vote by the people. So, the people  
11 in Baltimore County at the polls registered their pro-  
12 tests.

13 THE CHAIRLADY: Do you feel there ought to  
14 be an constitutional comment, one way or the other, on  
15 the subject?

16 MR. SARTORIUS: I haven't thought that through  
17 and I haven't talked to other superintendents about that  
18 particular item. It seems to me that money appropriated  
19 for public schools, if it is to be kept inviolate, would  
20 mean -- and I think the local funds should be kept in-  
21 violate too -- but you probably don't want that in the





1 State Constitution. If it is kept inviolate, then money  
2 appropriated for public schools should not be used for  
3 non-public school purposes.

4 MR. ENEY: Could I ask you to comment on two  
5 things, Mr. Sartorius? I have never clearly understood  
6 the functioning of the educational budget at the county  
7 level. Generally, you have two sources, State aid and  
8 the county which provides you with a lump sum amount  
9 over which the county commissioners, or if it's a charter  
10 government, the county council has full control; but the  
11 county board of education, on the other hand, has complete  
12 control as to how it is spent.

13 Suppose the county board or the State board  
14 together make a mistake in their estimates on which is  
15 based the State aid and also your matching funds. You  
16 estimate that you are going to have so many pupils and  
17 you end up with ten per cent less or so many classrooms,  
18 and you have less. What happens to the excess money  
19 that is thereby in the budget by reason of these erroneous  
20 estimates? Is this money that the Board of Education  
21 can spend for other purposes or --



1 MR. SARTORIUS: No, sir. We don't get the  
2 money. We don't get the money from the State. The  
3 estimates are submitted at the time of the budget, but  
4 the payments are made on actual numbers.

5 MR. ENEY: What happens to it in the State  
6 budget?

7 DR. ZIMMERMAN: It reverts. That is what I  
8 was talking about. It goes back.

9 MR. ENEY: To the general fund?

10 DR. ZIMMERMAN: That is the million dollars  
11 I was talking about.

12 MR. ENEY: It goes back to the general fund?

13 DR. ZIMMERMAN: That's right.

14 MR. ENEY: What about the money that is  
15 matched by the State?

16 DR. ZIMMERMAN: It doesn't appropriate money  
17 on any per pupil basis.

18 MR. ENEY: I know that, but you have matching  
19 funds and your request from the county for funds neces-  
20 sarily reflects the estimate of the pupils in schools  
21 generally. If they prove to be erroneous, do you just



1 use the money for other purposes?

2 MR. SARTORIUS: The County provides a budget,  
3 a general budget, not on any pupil basis or any matching  
4 basis. They support a program of education. We offer  
5 the program of education. Even though we might be 100  
6 or 200 pupils over, it doesn't matter. Our estimates  
7 have been a little over a quarter of 1 per cent over.

8 DR. ZIMMERMAN: Frequently the County gets  
9 hurt because they employ a certain number of teachers  
10 expecting Y number of pupils and, if they don't get  
11 State aid, they have to support those teachers.

12 THE CHAIRLADY: Thank you. Is Mr. Raver here?  
13 Before you proceed, Mr. Raver, I wonder how we shall pro-  
14 ceed from here? It is a quarter of 1:00. I don't know  
15 what the desires of the Commission and the people who  
16 still haven't given us the benefit of their views may  
17 be about recessing? I for one would like to hear from  
18 everyone today, if that is possible, especially since  
19 they are here. What do you think, Mr. Eney?

20 MR. ENEY: I don't know. I imagine Mr. Beatty  
21 wants to speak and I don't know how many others.





1 (Discussion held off the record.)

2 THE CHAIRLADY: All right, Mr. Beatty.

3 MR. W. CARROLL BEATTY: Madam Chairlady, I  
4 hardly need to say anything. On your agenda, I am Mrs.  
5 Howard Crist, but Mrs. Crist is having a meeting with  
6 the Governor and couldn't get here. She asked me to  
7 comment to you on the thoughts that have been expressed  
8 in the study of this matter by the members of the Boards  
9 of Education. I think each of these have been covered,  
10 but could I just make this report on behalf of the  
11 Association.

12 It is suggested that Article 43 could be  
13 amended with the elimination of this last sentence which  
14 has been discussed so thoroughly. It is suggested that  
15 Article 8, Section 1 could be updated. On Section 2,  
16 they thought maybe some different wording could be used,  
17 if it is to be done, inasmuch as the school system is  
18 already established, and the other one, Section 3, it is  
19 believed particularly to leave this provision intact;  
20 and the other thought we have, could you identify more  
21 particularly what are school funds. That is all we have



1 to say. Thank you.

2 THE CHAIRLADY: If you are able to remain a  
3 few minutes, we might have some questions.

4 MR. BEATTY: Thank you.

5 THE CHAIRLADY: Mr. Raver.

6 MR. MILSON C. RAVER: Madam Chairlady, I  
7 brought some prepared statements, and I don't know whether  
8 you would prefer to have them now. I see. I made one  
9 horrible mistake to start with. I said Mr. Chairman.  
10 May I say Madam Chairlady and members of the Committee.  
11 I should like to go through here and I think I can do  
12 this fairly quickly, and I will try. I'm not a very good  
13 reader, but as you look at this, I will hit the high  
14 spots.

15 I wish to express my appreciation to the  
16 Commission and to Mr. John C. Brooks, executive director,  
17 for the courtesy extended to the Maryland State Teachers  
18 Association, inviting us to discuss with you the educa-  
19 tional provisions of the Constitution of Maryland. I am  
20 here to represent the Association, an organization of  
21 28,000 of the professional educators in the City of



1 Baltimore and the twenty-three counties of Maryland.

2 Under the Declaration of Rights -- and I'm  
3 very happy to see Mrs. Freedlander sitting there and to  
4 hear that she is Chairman --

5 MRS. FREEDLANDER: Not Chairman, a member.

6 MR. RAVER: Admittedly, the language of the  
7 Declaration of Rights is old style, nevertheless it is,  
8 in my opinion, one of the most beautifully written and  
9 most interesting documents of its type that I have ever  
10 read. As a Marylander, I would urge every citizen to  
11 read and study the entire document with the same care  
12 with which I would also hope that he reads the Holy Writ.  
13 A study of both documents will make him a better citizen,  
14 despite certain apparent inconsistencies in both  
15 "canonical" works.

16 Article 36 of the Declaration. This article  
17 is, in my opinion, highly important to the field of  
18 public education and is one of the finest statements of  
19 its kind. This is, of course, the one dealing with the  
20 separation of church and state, I suppose you could call  
21 it, or religious observance. I noticed it wasn't quoted





1 in the material you presented and I wanted to particular-  
2 ly refer to it here. Although a portion of this article  
3 has been partially, at least, invalidated by a recent  
4 decision of the Supreme Court, I urge the retention of  
5 this article with the least possible change and that the  
6 phrase: "Nor ought any person to be compelled to frequent,  
7 or maintain, or contribute, unless on contract, to main-  
8 tain, any place of worship, or any ministry," be retained  
9 without change.

10 You were discussing this a while ago and it  
11 seems to me again, let me urge this, as others here have,  
12 you do not attempt to write a Constitution in specific  
13 detail. As Mr. Sartorius said, if you do, we're going  
14 to be faced with constitutional amendments at every  
15 whipstitch, if I may use that word. But even in the  
16 field of education, since our whole Declaration of Rights  
17 is based on English law, I think it can be argued, when  
18 it says any person ought to be free to administer -- in  
19 England, it's the ministry of education, and I wonder if  
20 this doesn't have significance to the very things you  
21 have been talking about here before. I am not a



1 constitutional lawyer. I would not want, heaven forbid,  
2 anyone thinking that I were. I am a layman who works  
3 in education and I am interested in it, but if a specific  
4 change in the Declaration of Rights or document is made  
5 to try to clear up this question of the separation of  
6 private education, particularly parochial from that of  
7 public education, then I think we're in for trouble as  
8 time goes on, for the simple reason the courts are trying  
9 to decide this and we see an evolution over the years in  
10 change here.

11 Why not keep the document simple, on some  
12 basis such as you have here. Maybe you would want to  
13 define the word ministry. I don't know; but I think it  
14 could be made to apply to education as well as the  
15 pulpit; but, in doing so, leave it so broad and general  
16 that the courts could decide whether this institution  
17 A got aid from the State and B did not, and so on. I  
18 don't see, personally, how you can, with changing social  
19 conditions and the decisions in the courts and so on  
20 over the years, that you can write a document that will  
21 take care of that for a considerable length of time.



1 Article 43. Similarly, it is my opinion that  
2 Article 43 is one of the most satisfying definitions of  
3 education which I have ever read in more than thirty  
4 years of experience in the teaching profession. Although  
5 many people will read it hurriedly and say, what does it  
6 mean, there is, in my opinion, no better definition of  
7 education than the first sentence of Article 43. I  
8 strongly urge its retention without change.

9 Now, my good friend, Mr. Burgess was talking  
10 about agriculture and I seemed to sense that maybe he  
11 thought that ought to be pulled out. Agriculture is not  
12 mentioned here in terms of a specific subject, other than  
13 that we educate for agriculture, and I urge you to give  
14 consideration to that, because it is a beautiful state-  
15 ment and I think there is just as much reason for having  
16 agriculture there as there is science and all the other  
17 statements that have been made. So far as I am concerned,  
18 I would hope you would not change it.

19 I hold strongly for the traditions and heri-  
20 tage which have come down to us from our forefathers and  
21 believe that such statements, as Articles 36 and 43,





1 belong in this category. They are both stimulating and  
2 effective, despite the fact that they cannot be read as  
3 hurriedly as this morning's newspaper.

4 Now, we come to the Constitution itself.  
5 Article 3, the legislative department, Section 52, of  
6 which there has been considerable discussion and I may  
7 point out I was interested to note that you didn't list  
8 that on the sheet you sent and I hope, Madam Chairlady,  
9 that this is perhaps a matter of oversight and not one  
10 of lack of interest on the part of the Commission in the  
11 educational aspects of this.

12 Now, in my opinion, this section is almost  
13 equal in importance to Article 8, which deals directly  
14 with public education.

15 DR. BARD: Mr. Raver, I think you should know  
16 that before you came in a good deal of attention, and I  
17 am speaking now as a member of the Commission, not this  
18 particular Committee, since you are dealing with an item  
19 in the legislative department, of which I am chairman;  
20 but a good deal of attention has been given to this  
21 article. In fact, most of the attention before you



1 arrived has been given to this.

2 MR. RAVER: I will simply state that because  
3 it is not on the sheet I received, I don't know whether it  
4 is specifically mentioned, but this provision elevates  
5 public education to a true Jeffersonian status in our  
6 society, along with the legislative and judicial branches  
7 of our State government. Further, the budgetary regu-  
8 lations set forth protect the school program from  
9 politican manipulation through threats to remove the  
10 necessary funds.

11 When the General Assembly has enacted an  
12 education measure the financing must be provided and  
13 neither the chief executive nor any other State official  
14 can influence school personnel by financial threats in  
15 the course of their performance of duty.

16 I hasten to add that I have never seen any  
17 attempt at such manipulation in my twenty years in  
18 Annapolis as an education lobbyist, but I have seen  
19 evidence of such machinations in other areas where such  
20 constitutional protection is absent. Therefore, I  
21 strongly urge that these provisions be retained in the



1 Constitution of Maryland.

2 Coming to Article 8 directly, now. There has  
3 been much discussion here. I hesitate to say much about  
4 this. I would call your attention to the fact how  
5 beautifully this section has held up, Section 1, over  
6 100 years, despite our expanding culture and growing  
7 technology, both of which are essential to modern day  
8 society.

9 Now, I have italicized practically everything  
10 in there and in a moment I would like to take it phrase  
11 by phrase, if I may. May I say here, and I don't know  
12 whether rebuttal is granted one at this point or not,  
13 but there has been much discussion here about whether or  
14 not the university should be granted constitutional  
15 autonomy.

16 Well, may I say that my connection with the  
17 University of Maryland has been pleasant and, of course,  
18 as Dr. Kuhn said -- now that he is gone, I perhaps should  
19 not object, but with thirteen years of teaching exper-  
20 ience, practically all of my direct teaching experience  
21 was in the field of higher education and, Madam Chairlady





1 and members of the Commission, I can see no reason, and  
2 I mean this most sincerely, that the ivory towers of the  
3 University of Maryland should be any more sacred or any  
4 more autonomous than those of Dr. Bard's institution or  
5 other State institutions not mentioned here, and I include  
6 the State Department of Education and the State Board.

7 Now, Dr. Zimmerman would not say this, but I  
8 will. When you get into this matter of the budget of the  
9 State Department of Education, why doesn't it have some  
10 of the automatic protection that the State program has?  
11 And I will use a very specific example -- and, Dave,  
12 don't be embarrassed here, but the point has arrived  
13 where the constant cutting of the State Department of  
14 Education in salaries, where the salaries of the people  
15 there are determined not by the State Board of Education,  
16 in effect, but by the State Employment Commissioner and  
17 it is impossible for them to go out and hire people that  
18 they would choose to hire under the best school systems  
19 of the State. You see, they have to in a sense take the  
20 second choice sometimes.

21 Now, should this be? Does this contribute to



1 a good program of education? Why is this less important  
2 than the University of Maryland wanting to hire some re-  
3 search professor? So, what I am saying to you is, and I  
4 haven't written this here because I didn't want to get  
5 into the matter of autonomy. I would plead with you,  
6 if you want to go into the area of autonomy in higher  
7 education, then I urge it be broad, complete, for all  
8 institutions. I think you will find this will take care  
9 of some of the problems Dr. Pullen and Mr. Eney were dis-  
10 cussing, the matter of who gets in and who doesn't,  
11 because somebody in higher education probably will have  
12 to take care of these people. Dr. Bard will have to,  
13 if the University of Maryland doesn't, and he will get the  
14 funds to do so. So, this is important and again I repeat,  
15 if anything needs to be added to this wonderful statement  
16 in Section 1, it simply is to make sure that this matter  
17 of a system of free public schools include higher educa-  
18 tion. In other words, maybe you need another paragraph  
19 or another section in this whole article -- I don't know --  
20 which would take care of this. If you put autonomy in  
21 there, make sure it deals with the universities, the



1 State colleges, the community colleges and the State  
2 Department and the State boards and so on. Now, again,  
3 beware of spelling them out, but do it so this is inclu-  
4 sive.

5 May I take your time for just one illustration.  
6 Again, this is a rebuttal in this matter of whether or  
7 not there is sufficient funds for every youngster who is  
8 able and willing to go to college these days, as Dr.  
9 Kuhn implied, and frankly there is not, in my opinion.  
10 Again, I revert to my experience in higher education.  
11 I once visited, in the days when you recruited students,  
12 a young man in this State who had the top record of his  
13 school, his high school. His family lived in a converted  
14 chicken house. When I talked with the boy about going to  
15 college, he was leaning against the handles of a plow  
16 behind a mule, plowing corn, and when I tried to get him  
17 to go to the institution that I represented on about a  
18 75 per cent scholarship, he looked at me wistfully and  
19 said, I can't go, I can't go.

20 Now, this is the kind of person Dr. Pullen  
21 was talking about. Here was the top person in his class





1 being denied. What good is it to give that young man a  
2 loan or tell him that somebody or other has a scholar-  
3 ship, if the State isn't going to take care of him?  
4 So, this is the point, and I would urge you to give much  
5 consideration to this area, not just of autonomy, but  
6 this whole area of what the State is going to provide  
7 for by way of opportunity for its citizens in public  
8 higher education.

9 If I may move on. A model of concise language.  
10 Mrs. Bothe, I would agree with you here, and others, this  
11 is highly important. California law on schools and  
12 Constitution tends to spell everything out to the point  
13 where you can't even get a teacher's salary raise out  
14 there without getting an amendment of the Constitution.

15 Our statement here has stood for 100 years,  
16 and I think this is the way it should be. Keep it simple,  
17 concise and direct and leave the details to statutory  
18 enactment.

19 I probably shouldn't go into this, the  
20 situations are clear-cut; the General Assembly, the  
21 chain of authority. That is all adequate. The next



1 phrase, establish throughout the State; I do have some  
2 reservations about this, very frankly, and I would call  
3 this to your attention. You will note that the term  
4 throughout the State is no longer very exact in terms of  
5 government in Maryland, such as Mr. Sartorius' portion  
6 of it, as you discussed, the local subdivisions.

7 It seems to me there should come in there such  
8 wording as the City of Baltimore and the twenty-three  
9 counties or the political subdivisions or some way that  
10 would make this a bit more specific than it now is. I  
11 would urge some slight definition or substitution here.

12 Then the next phrase, a thorough and efficient  
13 system of free public schools. These are admirable words,  
14 but would probably provide little protection if either  
15 the action of the General Assembly or the various school  
16 systems were to be challenged for their thoroughness or  
17 efficiency in terms of educational end products and I  
18 personally would like to see it word challenged in there.  
19 It is here that I believe that this section should be more  
20 clearly delineated. You can't measure this in human  
21 beings and how much they have learned very well.



1           If I might digress just for a minute, and I  
2       won't read all the things on Page 5, but what is being  
3       done is to talk around the country as to a basic or  
4       minimum foundation program, and these almost always by  
5       statute provide what you see here. First the structure,  
6       secondly the basic program involving teachers, length  
7       of years and so on; third, there is a means of financing  
8       and, of course, as this develops, it takes care of the  
9       local, provides for the State's share, whether it is  
10      equalizing, Mr. Eney, or whether it's a basic aid or  
11      what you might call it and, of course, highly important  
12      here is that this equalizing factor be used, or rather,  
13      use the funds in the entire State, no matter from whence  
14      they are drawn, whether it is Baltimore County or  
15      Montgomery, or where; to make sure every citizen will  
16      get an adequate education. This is important. This is  
17      a common practice.

18           On the other hand, it is in this section I  
19      would recommend there be some revision. I am not a  
20      lawyer. I don't know how you would do this, but that  
21      perhaps there be some reference to a basic or minimum





1 program of free public education in each political sub-  
2 division of the State which shall be clearly designated  
3 by statute and from which no subdivision shall be exempted.

4 The legislature has a lot of power, but as  
5 Dr. Pullen said, every government legislature and leader  
6 should operate under suspicion and capriciousness some-  
7 times comes into the whims and actions of all of us. So,  
8 I would hope there would be an extension of a guarantee  
9 in this part of the statement.

10 I would call your attention finally to this,  
11 and shall provide by taxation, or otherwise, for their  
12 maintenance. This is splendid and this is becoming more  
13 and more important as time goes on because what this  
14 says here is that the responsibility lies with the State  
15 not to pay the whole bill, but it lies with the State  
16 first of all to provide some State funds; secondly, to  
17 determine the local share through certain ranges of  
18 taxation or otherwise and to accept and use properly the  
19 Federal funds made available for education. So, this in  
20 years to come will become even more important.

21 I shall not comment on Sections 2 and 3. It



1 has already been done. May I simply say in summary that  
2 I recommend that the Commission, in its deliberations  
3 concerning the necessity for revision of the Constitution  
4 of Maryland, proceed with extreme, deliberate caution.  
5 In other words, we may have more to lose than gain.  
6 I am thinking more of where you go from here. You see  
7 the constitutional convention, legislative enactment,  
8 referendum and so on, and then, of course, finally, I  
9 have made some suggestion here for minimal change to  
10 bring these documents in line with present day needs in  
11 the program of education which is necessary in Maryland  
12 today, and I do thank you for your patience at this late  
13 hour.

14 THE CHAIRLADY: We thank you. Is Mrs. Romoser  
15 or Mrs. Bull from the Parent-Teachers Association here?

16 MRS. A. K. ROMOSER: I am Mrs. Romoser. Mrs.  
17 Bull is also here.

18 THE CHAIRLADY: You are both perfectly wel-  
19 come to make remarks, if you both have some, or take your  
20 choice.

21 MRS. ROMOSER: Speaking for the Maryland



1 Council, may I say first that we thank you for the  
2 privilege of coming to this meeting. Unfortunately,  
3 through a misunderstanding, we did not find out about  
4 this until a late date and therefore at this particular  
5 time we are not prepared to make any statement.

6 We came to get an education, so to speak,  
7 and hear the views. We have from time to time noted --  
8 and this has dated back over the years -- our concern for  
9 a constitutional convention because of the changes, the  
10 threat to the articles pertaining to education. So,  
11 this has been of concern to us for a number of years.  
12 What I would specifically like to ask at this time, in  
13 speaking with Mr. Brooks, I was told that we could come  
14 in at a little later date with any recommendations or a  
15 position paper. What is the time element involved here?

16 THE CHAIRLADY: Well, the time element is  
17 fairly close on making decisions on basic policies, in  
18 any event. I believe Mr. Eney is trying to have the  
19 basic recommendations in by April. Isn't that correct,  
20 Mr. Eney?

21 MR. ENEY: If we can.





1 THE CHAIRLADY: It is a very ambitious  
2 schedule and I might add that while we may not find an  
3 opportunity to have an open hearing such as we are having  
4 here today on education provisions, the Committee is  
5 welcoming suggestions in writing or through other means  
6 from groups that aren't represented today, or we perhaps  
7 will have questions to ask further of the speakers today  
8 and after we have had an opportunity to digest what has  
9 been said, all of which is being transcribed and will be  
10 studied not only by those here present, but those who  
11 were unable to come. So, the sooner the better is the  
12 only answer I could give you.

13 MRS. ROMOSER: We have set up a committee and  
14 Mrs. Bull is one of the members of the committee. So,  
15 we will have it forthcoming very shortly.

16 THE CHAIRLADY: Mrs. Bull?

17 MRS. FRED L. BULL: I had filed a personal  
18 and very brief and hastily-written statement urging the  
19 retention of Article 8, Sections 1, 2, 3, and Article 3,  
20 Section 52. It is very general and it has been covered.

21 THE CHAIRLADY: We will certainly consider it.



1 Of course, we haven't had an opportunity to read it. It  
2 was just distributed before the meeting, but we will con-  
3 sider it the same as if you had read it out loud now.

4 Is Reverend Owens here?

5 MR. ROBERT L. LAMBORN: My name is Robert  
6 Lamborn, I am Headmaster of the McDonogh School. I  
7 might say that Father Owens was out of town when the  
8 message about this meeting was sent to him, so that we  
9 received it, in fact, at the beginning of this week, a  
10 day or so ago, and while I am here representing the  
11 Private Schools Association of Baltimore, I come, I hope,  
12 informed, but instructed.

13 I would like to say first we appreciate the  
14 opportunity of being here. I would like to stress the  
15 fact that we are very conscious and very jealous of the  
16 very fine working relationship which exists within this  
17 State between the public schools and the Superintendent  
18 of Schools, and we have been around some and we find our  
19 status has been much happier than in many other locations  
20 and we would like the Commission to be aware of that fact.  
21 The independent schools have an abiding and proven



1 interest in the health of public education. We in the  
2 schools intend to grasp, as we have today, every oppor-  
3 tunity presented to us to participate in any constructive  
4 way possible and appropriate to us to insure the health  
5 of the public schools.

6 We would not presume to make suggestions with  
7 regard to the constitutional provisions for the public  
8 educational system on any level. Obviously, the people  
9 here in the public school systems are in a better posi-  
10 tion to make such recommendations. We would urge the  
11 Commission to consider such steps as are appropriate to  
12 insure the people of the State the values and safeguards  
13 which we feel are inherent in the educational system in  
14 the preschool, elementary, secondary and university  
15 level. Representatives of the private schools of  
16 Baltimore and individual members of the Association  
17 would be pleased to participate in any appropriate way  
18 in the consideration of constitutional provisions toward  
19 this end.

20 THE CHAIRLADY: Thank you. Miss Stern has  
21 presented the Commission with a written statement which





1 we have already had an opportunity to consider, since  
2 she was kind enough to advance it to us. Is there any-  
3 thing you would like to add?

4 MISS STERN: There are two things. When I  
5 was in the State Department of Education, this provision  
6 about inviolate funds was particularly helpful in con-  
7 nection with their use for the prevention of money being  
8 diverted for the use of parochial schools, especially  
9 during the time I was there. I think it is very impor-  
10 tant to keep the funds for public purposes and, if we  
11 are going into the other, we ought to have special  
12 provisions in the Constitution for it. If we are going  
13 to support non-public schools, I think you should have  
14 a provision in the Constitution about it.

15 The other point I wanted to make is that our  
16 school law and the budget law of 1916, which the  
17 President of Hopkins University had a great deal of  
18 influence in writing, have worked so well for the last  
19 fifty years, that I think we ought to be very hesitant  
20 about changing these provisions that have helped to give  
21 us continuity in our policy. When I was in the department,



1 we had a great many visitors from other states and the  
2 thing that amazed them was the continuity of policy here.  
3 Our people all have held their jobs for many years. I  
4 was in the system twenty-seven years. Our State Super-  
5 intendent has been in for twenty or more years. Our  
6 County Superintendents have a great deal of continuity.  
7 I think there is no other state that has this, if you  
8 look up the data, and that is one of the reasons we have  
9 progressed so well, this continuity of policy, and I  
10 think the Constitution and the laws, the 1916 laws are  
11 responsible for that and I hope they will be continued.

12 DR. BARD: I hope you are going to give me a  
13 chance.

14 THE CHAIRLADY: I am going to give you a  
15 chance, but last, Dr. Bard. I have laid down a policy,  
16 we're not going to ask anybody questions unless there is  
17 time, after everyone has spoken. Mr. Crosby? Is he  
18 here? Well, Dr. Bard, you are in.

19 DR. BARD: As a member of the Commission, I  
20 expected to be last and I am going to speak very briefly  
21 as President of the Baltimore Junior College, and I thank



1 you for inviting me within that capacity. It is rare  
2 for you to hear from me along those terms. You should  
3 know that it is a highly important capacity because it  
4 is the most rapidly growing aspect of higher education  
5 in the whole country. About a million students are now  
6 in community colleges and there are about a little over  
7 4,000,000 in higher education. As far as Maryland is  
8 concerned, we now have about 10,000, 3,000 in the Baltimore  
9 Junior College alone.

10 There are four points I want to make very  
11 hastily. First, I would like to endorse as President  
12 of the Baltimore Junior College Dr. Zimmerman's position  
13 and others in respect to Article 43 of the Declaration  
14 of Rights, and Article 8 of the Constitution, and  
15 particularly Section 52 of Article 3.

16 You should know, by way of illustration, this  
17 matter of holding inviolate the funds particularly as they  
18 refer to the insensitive areas, especially for poor  
19 colleges such as the one I represent. We draw up a  
20 budget and unless we can be certain that the matching  
21 funds, as far as the current operating funds are





1 concerned, and they are clear-cut in regard to how much  
2 will be matched. At present, up to \$300 for each full  
3 time student in community colleges. Now, unless we know  
4 we can depend upon this, we are really lost and this  
5 comes as part of the community college code that was  
6 established in 1961.

7 The same would apply in terms of capital  
8 improvement, where 50 per cent of our capital improve-  
9 ment funds come from the State and I would add here that  
10 it is but one illustration of the significance of all  
11 of this.

12 I would endorse Dr. Zimmerman's position in  
13 regard to adding -- and I say this as President of a  
14 community college -- adding into the Constitution some  
15 statements dealing with the State Board of Education  
16 and the State Superintendent of Schools. I like the  
17 idea of adding equal opportunity for all children. I  
18 really think -- perhaps, I wouldn't have the word  
19 children. I would add for children and young people  
20 and the youth, or citizens, perhaps making it broader  
21 than even youth. I think it is especially important



1 for higher education because it refines the debate in  
2 respect to tuition, which Dr. Pullen talked about at  
3 length. So that, within that term itself, I believe  
4 that we can move through statutory law toward attaining  
5 the fullness of the idea that Dr. Pullen talked about.

6 Next -- and incidentally, I do think, speaking  
7 of adding State Board of Education and Superintendent of  
8 Schools, and let me say how strongly I believe we ought  
9 to do that, because some of you know my second State of  
10 Nebraska, where I taught for eight or more times, and  
11 there was a time when their Superintendent of Schools  
12 was elected. This is no longer true, and you can see the  
13 difference in regard to the movement within that very  
14 State, where the Superintendent has his relationships  
15 with the larger body and the control there. This would  
16 be true for the states like the State of Washington,  
17 and I could go on if time permitted.

18 I personally believe, as one in higher educa-  
19 tion, that perhaps we can solve this problem of higher  
20 education in terms of the model. The model gives a  
21 rather brief statement in connection -- and that is a



1 model state constitution which was drawn by the National  
2 Municipal League. It gives a rather brief statement in  
3 connection with support of higher education, and I think  
4 that from that could flow some of the ideas that we  
5 desire, particularly since we would like the statement  
6 to be brief.

7 In connection with county units, and this is  
8 my final point, it seems to me that we need to clarify  
9 somewhere the relationship of the county units to the  
10 State's responsibilities in education. This has come  
11 up. Mr. Eney has raised it, Mr. Sartorius and Dr.  
12 Zimmerman have raised it. In doing this, I would call  
13 your attention to the fact that Baltimore City's  
14 Department of Education sustains a rather unique rela-  
15 tionship here and, if you go through the Constitution,  
16 you will note that the relationship is somewhat differ-  
17 ent than that in the county.

18 To some degree, the history of education in  
19 the State, wherein the Baltimore City Department of  
20 Education was really established before the State  
21 Department of Education, which was the reason for this





1 unique relationship. I'm not going into this, but  
2 merely drawing your attention to the fact that when  
3 this is done, there should be some attention to this  
4 factor.

5 THE CHAIRLADY: Thank you very much, Dr.  
6 Bard. Mrs. Robie, who is a member of the State Board  
7 of Education, but not speaking for it, as I understand,  
8 might have a few words to say, nevertheless.

9 MRS. WILLIAM F. ROBIE: Madam Chairlady,  
10 I am not here as a member of the State Board of Educa-  
11 tion, but as a committee member that the Maryland  
12 Congress of Parents and Teachers has formed to study  
13 this, and we just heard of our appointment by mail  
14 yesterday. So, you know that we were not prepared  
15 to really make a statement. Although what I would  
16 have to say would be just a word, but it has come from  
17 my knowledge, again working through the P-TA's as a  
18 member of the Maryland Congress of Parents and Teachers;  
19 I was the immediate past president.

20 THE CHAIRLADY: Could you give us your  
21 address, so we know where to communicate with you?



1 MRS. ROBIE: I am at 9348 Reed Circle, Fort  
2 Washington, Maryland, 20022, I am also the National P-TA  
3 Program Chairman, at the moment. Having worked with  
4 these other states, through the P-TA National Board,  
5 well, of course, we talk a great deal about the problems  
6 that come up and legislation has been one of our major  
7 items of work, and we have always been so very impressed  
8 with the manner that we are able to get things over in  
9 Maryland, with the twenty-three counties and Baltimore  
10 City making it so much easier to do things in our State.  
11 We just, if you look around at the way education is  
12 operating, you can tell that we have a very fine system,  
13 and so I am relieved now in hearing what has been said  
14 today because when I heard of the meeting, I thought,  
15 oh, the State Board of Education members would like to  
16 be here because they would have a great stake in this;  
17 but it does seem that you have had these advantages of  
18 our State pointed out and, as Mr. Raver said, that we  
19 may have more to lose than to gain and I would certainly  
20 want to point out the fact that I am not one not to want  
21 to rock the boat, if rocking the boat is a good idea.



1 If it will get a better education for the children in  
2 the State of Maryland, I am all for rocking the boat  
3 good and hard, but I do see that we could rock the boat  
4 to a point where we are doing a disservice, and I hope  
5 that you will take into consideration all the things  
6 that have been said and retain the very best. Thank  
7 you.

8 THE CHAIRLADY: Thank you very much, Mrs.  
9 Robie. Well, I have twenty minutes after 1:00. I think  
10 we can spare maybe two minutes, if any member of the  
11 Commission has any urgent question to ask, particularly  
12 of the speakers we have heard, to run through some  
13 quickly.

14 MR. ENEY: Can I ask Major Lamborn to comment  
15 on one thing very briefly? Do you think it would be  
16 desirable to have in the Constitution a general pro-  
17 vision somewhat along the lines of the phraseology of  
18 Article 43, but more specifically directed toward  
19 private schools and the desire of the State to further  
20 education in private schools as well as public schools?

21 MR. LAMBORN: Mr. Eney, I am not as familiar





1 with the articles that you mentioned as specifically as  
2 I would like to be, but it does seem to me that it would  
3 be well for the Commission to consider some statement  
4 which in a sense supports the value and the contribution  
5 of independent education in a broad sort of way, rather  
6 than leaving it entirely out of consideration.

7 MR. ENEY: The second question, do you think  
8 it desirable to include in the Constitution some pro-  
9 vision for specific aid to private institutions as,  
10 for example, tax exemption, which is now a matter of  
11 statute and not a matter of constitutional right?

12 MR. LAMBORN: I am speaking entirely for  
13 myself, now, sir. I would think that it would be help-  
14 ful to have a broad generalized statement such as tax  
15 exemption. When it goes from there to specific aid, in  
16 terms of outflow of dollars, I would make a distinction  
17 there.

18 THE CHAIRLADY: Mr. Raver, did you have any  
19 comment in that area, as to whether there should be any  
20 reference to private education in the Constitution?

21 MR. RAVER: Well, I referred to, of course,



1 Article 43, in this matter of ministry, but, of course,  
2 that would deal more nearly with parochial education  
3 than private. I have said that I think this area should  
4 be kept so general that the courts should decide. For  
5 instance, there is an important case now before the  
6 Court of Appeals of Maryland on this matter of State  
7 aid to, number one, private institutions and, number  
8 two, parochial institutions, and there is apparently a  
9 distinction in the argument of the case right there.  
10 This seems to me to be sound, to let the courts settle  
11 it from time to time because, as society needs changes,  
12 we find that the courts are changing their decisions  
13 about what the State ought to do with its dollars in  
14 terms of aid, and this satisfies me all right. I'm  
15 willing to leave this with the courts. So, I would say,  
16 if you get too specific here, we may regret it ten years  
17 from now and may be working for a constitutional amend-  
18 ment.

19 THE CHAIRLADY: Has anyone else any comments  
20 they feel urgent to make?

21 DR. ZIMMERMAN: Just a footnote to what



1 Mr. Raver said. Certain states have specific provisions  
2 as to funds.

3 THE CHAIRLADY: All right, I want to thank  
4 all of you for coming and to apologize for the lateness  
5 of the hour and the absence of lunch, which you may not  
6 have time to get en route to Annapolis. If you have  
7 any second thoughts or additions to the comments you  
8 made today, the Committee would be most grateful to  
9 receive them as soon as possible. We are going to have  
10 to give a great deal of thought to what has been said.  
11 I am sure you appreciate the immensity of our problem  
12 and we appreciate any help you can give to help solve  
13 our problem. Thank you all very much.

14 (Meeting concluded.)

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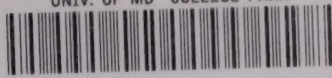








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